

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. 258

PIEDMONT & GEORGES CREEK COAL COMPANY,
PETITIONER,

vs.

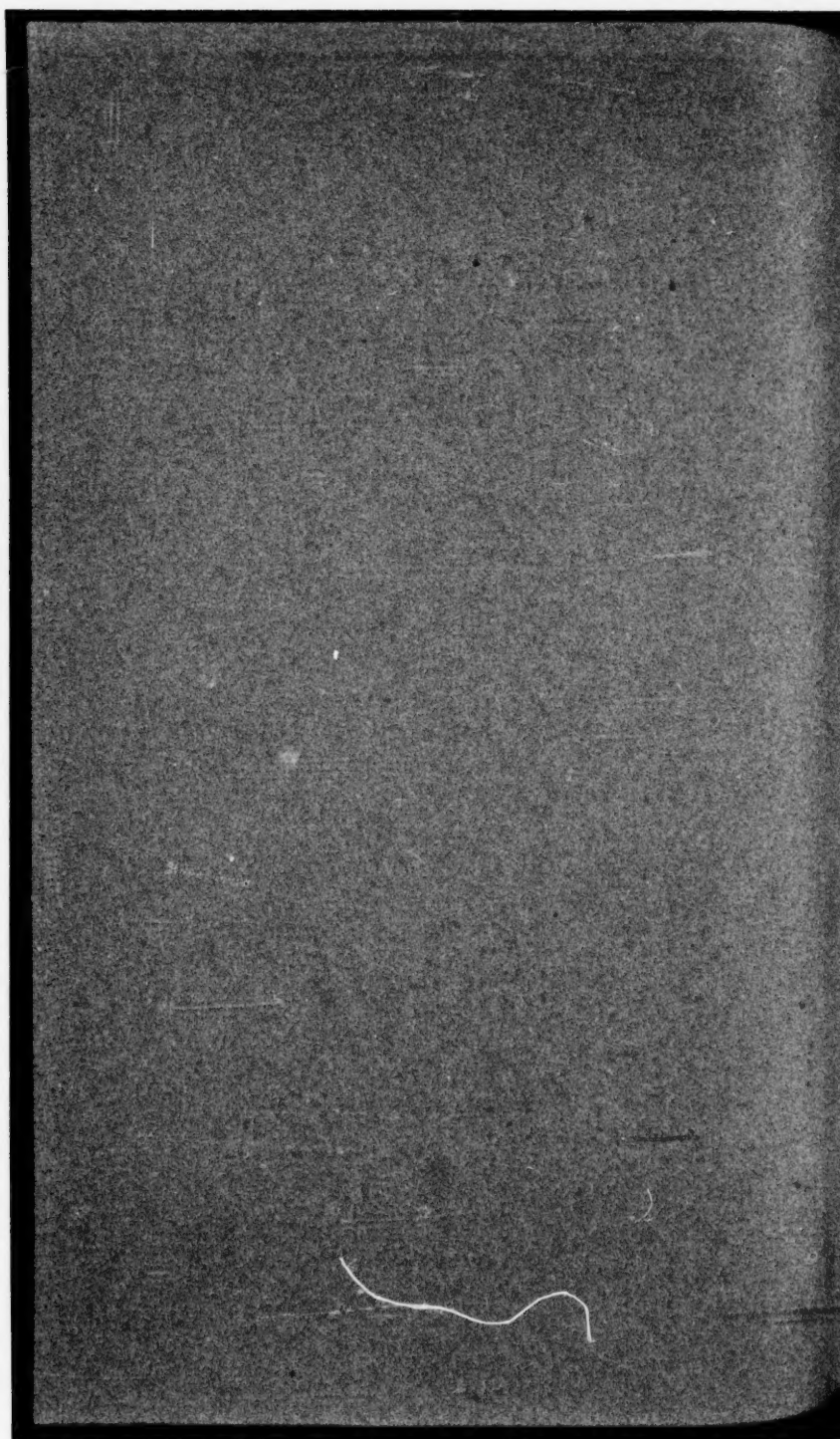
SEABOARD FISHERIES COMPANY, CLAIMANT, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1920.

CERTIORARI AND RETURN FILED NOVEMBER 15, 1920.

(23,761)



(26,761)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 675.

PIEDMONT & GEORGES CREEK COAL COMPANY,
PETITIONER,

vs.

SEABOARD FISHERIES COMPANY, CLAIMANT, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Transcript of record from the district court of the United States for the district of Rhode Island.....	1	2
Proceedings in case of Piedmont & Georges Creek Coal Co. and fishing steamer "Walter Adams" <i>et al.</i>	1	2
Libel	1	2
Interrogatories to the claimant.....	5	4
Libellant's stipulation for costs.....	9	6
Stipulation waiving custody.....	10	7
Claim by Seaboard Fisheries Co.....	10	7
Claimant's stipulation to pay decree.....	12	8
Answer of Seaboard Fisheries Co.....	15	9
Colloquy between court and counsel.....	21	13
Testimony of Thomas C. Meadows.....	25	15
John S. Brophy.....	52	31
Charles R. Horton.....	72	42
Charles E. Milligan.....	82	48
Offers of evidence, colloquy, &c.....	86	51
Testimony of Thomas C. Meadows (recalled).....	89	53
Stipulation of facts, July 24, 1915.....	93	55

INDEX.

	Original.	Print.
Stipulation of facts, August 20, 1915, &c.....	95	56
Libellant's Exhibit 1—9 orders for coal to Piedmont & Georges Creek Coal Co.....	98	67
2—Letter, Piedmont & Georges Creek Coal Co. to Atlantic Phosphate & Oil Corporation, September 11, 1914.....	103	60
3—Letter, Atlantic Phosphate & Oil Corporation to Piedmont & Georges Creek Coal Co., Sep- tember 15, 1914.....	105	62
4—Bill against Atlantic Phosphate & Oil Corporation.....	107	63
5—Bill against Atlantic Phosphate & Oil Corporation.....	108	63
6—Statement.....	110	65
Claimant's Exhibit 1—Contract between Piedmont & Georges Creek Coal Co. and Atlantic Phosphate & Oil Cor- poration, February 13, 1914...	114	67
7—Letter, Meadow to Coal Co., June 16, 1914.....	115	68
8—Letter, Bohannon to Atlantic, &c., Corporation, May 28, 1912	116	68
9—Letter, Meadow to Bohannon, May 28, 1914.....	117	69
10—Letter, Bohannon to Atlantic, &c., Corporation, August 24, 1914.....	118	69
11—Notice to Atlantic Phosphate & Oil Corporation, &c., by Lienor, January 4, 1915.....	119	70
Stipulation as to exhibits.....	122	71
Opinion of court, January 29, 1917, Brown, J.....	123	72
Claimant's objections to draft decree.....	138	80
Opinion of court, July 10, 1917, Brown, J.....	139	80
Final decree.....	140	81
Libellant's motion to reopen case.....	148	86
Petition for subpoena <i>duces tecum</i>	150	87
<i>Subpoena duces tecum</i>	151	87
Officer's return on <i>subpoena duces tecum</i>	152	88
Evidence in support of libellant's motion to reopen case	153	89
Testimony of Charles R. Horton.....	153	89
Interlocutory order to reopen case.....	179	104
Interlocutory order to amend final decree.....	180	105
Claimant's waiver of objections to form of decree.....	181	106
Amended final decree.....	182	106
Claimant's petition for appeal.....	190	111
Assignment of errors by claimant.....	192	112
Appeal bond.....	196	114
Citation on appeal.....	198	115
Stipulation as to filing of certain papers.....	199	116
Stipulation as to record on appeal.....	199	116

INDEX.

iii

Original. Print.

Citation and service.....	200 <i>a</i>	116
Order extending time to file record on appeal.....	200 <i>a</i>	117
Proceedings in the case of Benjamin Marchant <i>et al.</i> vs.		
Fishing Steamer "Herbert N. Edwards".....	201	118
Petition of intervention of Piedmont & Georges Creek		
Coal Company	201	118
Libellant's stipulation for costs.....	209	122
Claim by receivers of Atlantic Phosphate & Oil Corp....	210	123
Monition of intervening libel.....	211	124
Claimant's answer to intervening libel.....	212	124
Order of consolidation.....	217	127
Warrant of delivery.....	218	127
Stipulation as to exhibits.....	220	128
Motion to amend libel.....	220	129
Claimant's objections to draft decree.....	222	130
Opinion (not set out here; see Admr. 1359).....	224	131
Final decree	224	131
Amended final decree.....	230	135
Petition for appeal.....	234	138
Assignment of errors by claimant.....	237	139
Bond on appeal.....	241	141
Citation on appeal.....	243	142
Stipulation as to filing of certain papers.....	244	143
Stipulation as to record on appeal.....	245	143
Citation and service.....	246 <i>a</i>	144
Order extending time for filing record on appeal.....	246 <i>a</i>	145
Proceedings in the case of Michael Kennedy <i>et al.</i> vs. Fish-		
ing Steamer "Rollin E. Mason".....	247	145
Petition of intervention of Piedmont & Georges Creek		
Coal Company	247	145
Claimant's answer to intervening libel.....	255	150
Stipulation as to exhibits.....	261	154
Motion to amend libel.....	261	154
Opinion (not set out here; see Admr. 1359).....	263	154
Final decree	264	155
Amended final decree.....	270	159
Petition for appeal.....	274	162
Assignment of errors by claimant.....	277	163
Citation on appeal.....	281	165
Stipulation as to filing of certain papers.....	282	166
Stipulations as to record on appeal.....	283	166
Citation and service.....	284 <i>a</i>	167
Order extending time to file record on appeal.....	284 <i>a</i>	168
Proceedings in the case of John Whalen <i>et al.</i> vs. Fishing		
Steamer "William B. Murray".....	285	169
Petition of intervention of Piedmont & Georges Creek		
Coal Company	285	169
Claimant's answer to intervening libel.....	293	173
Stipulation as to exhibits.....	299	176
Motion to amend libel.....	299	177
Opinion (not set out here; see Admr. 1359).....	301	177
Opinion (not set out here; see Admr. 1359).....	302	177

	Original.	Print.
Final decree	302	178
Amended final decree.....	308	182
Petition for appeal.....	312	185
Assignment of errors by claimant.....	315	186
Citation on appeal.....	319	188
Stipulation as to filing of certain papers.....	320	189
Stipulations as to record on appeal.....	321	189
Citation and service.....	322 <i>a</i>	190
Order extending time to file record on appeal.....	322 <i>a</i>	191
Proceedings in case of Simon Poan <i>et al.</i> vs. Fishing Steamer "Martin J. Marran".....	323	192
Petition of intervention of Piedmont & Georges Creek Coal Company	323	192
Claimant's answer to intervening libel.....	331	196
Stipulation as to exhibits.....	337	199
Motion to amend libel.....	337	200
Opinion (not set out here; see Admr. 1359).....	339	201
Opinion (not set out here; see Admr. 1359).....	340	201
Final decree	340	201
Amended final decree.....	346	205
Petition for appeal.....	350	208
Assignment of errors by claimant.....	353	209
Citation on appeal.....	357	211
Stipulation as to filing certain papers.....	358	212
Stipulations as to record on appeal.....	359	212
Citation and service.....	360 <i>a</i>	213
Order extending time to file record on appeal.....	360 <i>a</i>	214
Proceedings in the case of W. Otis Payne <i>et al.</i> vs. Fishing Steamer "Amagansett"	361	215
Petition of intervention of Piedmont & Georges Creek Coal Company	361	215
Claimant's answer to intervening libel.....	369	219
Stipulation as to exhibits.....	375	223
Motion to amend libel.....	375	223
Opinion (not set out here; see Admr. 1359).....	377	224
Opinion (not set out here; see Admr. 1359).....	378	224
Final decree	378	225
Amended final decree.....	384	228
Petition for appeal.....	388	231
Assignment of errors by claimant.....	391	232
Citation on appeal.....	395	234
Stipulation as to filing of certain papers.....	396	235
Stipulations as to record on appeal.....	397	235
Agreement as to record on appeal.....	399	236
Order as to record.....	400	236
Clerk's certificate as to record.....	400	237
Citation and service.....	401	237
Order extending time to file transcript of record on appeal.....	401	238
Opinion, Dodge, J.....	403	238
Final decree	415	246
Motion to stay mandate.....	415	247
Order staying mandate.....	416	247
Clerk's certificate	416	247
Writ of certiorari and return.....	418	248

PIEDMONT & GEORGES CREEK COAL CO. VS. SEABOARD FISHERIES CO., ETC.

United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1327.

FISHING STEAMERS WALTER ADAMS et al.
SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

No. 1328.

FISHING STEAMER HERBERT N. EDWARDS.
Same v. Same.

No. 1329.

FISHING STEAMER ROLLIN E. MASON.
Same v. Same.

No. 1330.

FISHING STEAMER WILLIAM B. MURRAY.
Same v. Same.

No. 1331.

FISHING STEAMER MARTIN J. MARRAN.
Same v. Same.

No. 1332.

FISHING STEAMER AMAGANSETT.
Same v. Same.

Appeal from the District Court of the United States for the District
of Rhode Island from Amended Final Decrees (Brown, J.),
November 1, 1917.

TRANSCRIPT OF RECORD.

Charles R. Haslam, Gardner, Pierce & Thornley, for Appellants.
Frank Healy, Kirlin, Woolsey & Hickox, H. Brua Campbell, for
Appellees.

1 United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1327.

FISHING STEAMERS WALTER ADAMS et al.
SEABOARD FISHERIES COMPANY, INC., Claimant, Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

District Court of the United States, District of Rhode Island. In
Admiralty.

Admr. No. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

FISHING STEAMERS WALTER ADAMS, ALASKA, ARIZONA, GEORGE
CURTISS, MONTAUK, QUICKSTEP, and RANGER, Their Engines,
Boats, &c.

Libel.

(Filed June 16, 1915.)

To the Honorable Arthur L. Brown, United States District Judge
for the District of Rhode Island:

The libel of the Piedmont & Georges Creek Coal Company against
the fishing steamers Walter Adams, Alaska, Arizona, George Cur-
tiss, Montauk, Quickstep and Ranger, in a cause of contract, civil
and maritime, alleges as follows:

2 First. Respectfully shows the Libellant that it was at all
times mentioned herein, and now is, a corporation under and
by virtue of the laws of the State of Maryland, and at all such times
was engaged in dealing in coal.

Second. That at or about the beginning of the fishing season of
1914, the Atlantic Phosphate & Oil Corporation was the owner of
the said fishing steamers Walter Adams, Alaska, Arizona, George
Curtiss, Montauk, Quickstep and Ranger, and at this time it was
indebted in a large sum to the Libellant for coal previously supplied
during the season of 1913; that when it sought to secure coal for the
use of the said vessels during the fishing season of 1914, your Libel-
lant refused to extend any further credit to the Atlantic Phosphate
& Oil Corporation on its own account, and on information and be-
lief, the Petitioner alleges that the Atlantic Phosphate & Oil Cor-
poration was unable to obtain elsewhere credit on its own account
for coal to operate its fishing boats, and unless coal had been fur-
nished to it, it would have been unable to operate its said fishing

boats during the season of 1914. Accordingly, being desirous of obtaining coal from the Petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the Petitioner, in consideration of the sale, and delivery as requested to the Atlantic Phosphate & Oil Corporation of certain coal, during the months of May, June and July, 1914, for the use of its said steamers, to give maritime liens to the Petitioner on the several steam fishing boats abovenamed among others for all coal which was furnished by said Company for use on board the said steamers.

Third. In pursuance of this contract made by and between the Libellant and the Atlantic Phosphate & Oil Corporation, between

May 19, 1914 and July 3rd, 1914, at the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the fishing steamers abovenamed, or of a person or persons by it duly authorized, the Libellant sold, delivered, furnished and supplied at Promised Land, Long Island, and at Tiverton, Rhode Island, to the Atlantic Phosphate & Oil Corporation for the use of the abovenamed steamers during the months of May, June and July, 1914, to-wit, upwards of 2,390 tons of coal of the reasonable and agreed value of to-wit, Three and 35/100 (\$3.35) Dollars per ton, or Eight Thousand Six and 50/100 Dollars (\$8006.50).

Fourth. That the coal so delivered and furnished as aforesaid to and for the use of the steamers aforesaid, was necessary for their use, and was actually used by them in their operation as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Fifth. By reason of the premises and by virtue of the Statute of the United States, and especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the Libellant had at the time said coal was delivered and furnished, and has since the said times, a good and valid maritime lien against the said steamers for the reasonable and agreed value of the coal so furnished for the amount used by each of them.

Sixth. The Libellant is not informed as to the specific amount used by each of the said vessels, and in respect to said amounts, asks that the Court order the Claimant of said vessels to answer the interrogatories hereto annexed.

Seventh. The fishing steamers above mentioned are now within this District, in the custody of the Marshal, and subject to the process of this Court.

Eighth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your Petitioner prays that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said fishing steamers, their engines, boilers, etc., and that all persons having any interest or claiming to have any interest therein be cited to appear and answer the matters alleged in this libel, and that a decree may be entered in favor of your Petitioner for the amount of said maritime lien against each of the said steamers, with interest, together

with costs and disbursements of Libellant in this action, and that said fishing steamers be condemned and sold to pay Libellant's claim as aforesaid, and that the Court will grant to the Libellant such other and further relief as the justice of the cause may require.

PIEDMONT & GEORGES CREEK
COAL COMPANY,

(Signed)

By FRANK HEALY,

Proctor.

STATE OF RHODE ISLAND,
Providence, ss:

Frank Healy, being duly sworn says:

I am Proctor for the Libellant named herein. The foregoing Libel is true of my own knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The source of my information and the reasons for my belief as to the matters not within my own knowledge, are statements by persons having knowledge of the matters mentioned in the libel.

5

(Signed)

FRANK HEALY.

Subscribed and sworn to before me this 16th day of June, A. D. 1915.

(Signed)

ROY O. NELSON,

Notary Public.

Let process issue as prayed.

ARTHUR L. BROWN, J.

June 18, 1915.

Interrogatories to the Claimant to be by Him Answered in Writing and Under Oath.

1. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914 by the fishing steamers owned or operated by said Atlantic Phosphate & Oil Corporation?

2. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Walter Adams?

3. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Walter Adams?

4. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Walter Adams from on or about May 19th until October 21st, 1914?

5. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Alaska?

6. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Alaska?

7. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Alaska from on or about May 19th until October 21st, 1914?

8. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Arizona?

9. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Arizona?

10. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Arizona from on or about May 19th until October 21st, 1914?

11. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer George Curtiss?

12. Where, on what dates, and in what amounts was said — ing season of 1914, by the fishing steamer George Curtiss?

13. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer George Curtiss from on or about May 19th until October 21st, 1914?

14. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Montauk?

15. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Montauk?

16. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Montauk from on or about May 19th until October 21st, 1914?

17. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, be-

tween May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Quickstep?

18. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Quickstep?

19. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Quickstep from on or about May 19th until October 21st, 1914?

20. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Ranger?

21. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Ranger?

22. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Ranger from on or about May 19th until October 21st, 1914?

9 *Libellant's Stipulation for Costs.*

(Filed in Consolidated Cause #1359, June 16, 1915.)

District Court of the United States, District of Rhode Island.

Whereas a libel was filed in this court on the 16th day of June, A. D. 1915 by the Piedmont & Georges Creek Coal Company against the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger for the reasons and causes in the said libel mentioned and praying that the same may be consolidated in the answer, and the said libellant and Fidelity & Deposit Company of New York as surety hereby consent that in the case of default on the part of the libellant or Surety Company, execution may issue against their goods, chattels and lands for the sum of \$250:

Now Therefore it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators shall be and are bound for the sum of \$250 conditioned that the libellant above named shall pay all such costs as shall be awarded against it by this court, or in case of appeal by the Appellate Court.

(Signed)

PIEDMONT & GEORGES CREEK
COAL CO.
By FRANK HEALY.

Att'y.
FIDELITY & DEPOSIT COMPANY
OF NEW YORK,
WM. B. GREENOUGH,

Att'y in Fact. [SEAL.]

Attest:

G. L. & H. J. GROSS.

General Agents.

By JAMES F. PHETTEPLACE.

10

Stipulation Waiving Custody.

(Filed in the consolidated cause #1359 June 22, 1915.)

Actual taking into custody of the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger is hereby waived, provided a claim be filed thereto, and a bond with good and sufficient surety in the sum of Nineteen Thousand Dollars, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as may be allowed to the Libellant, be filed herein.

FRANK HEALY,
Proctor for Libellants.

Claim by Seaboard Fisheries Co.

(Filed in the Consolidated Cause #1359.)

June 22, 1915.

To the Honorable Arthur L. Brown, United States District Judge
for the District of Rhode Island:

And now appears Seaboard Fisheries Co., a corporation organized under the law of the State of New York, and states that it was and is the owner of said steamers "Walter Adams", "Alaska", "Arizona", "George Curtiss", "Montauk", "Quickstep" and "Ranger", and Seaboard Fisheries Co. appearing by William H. Thornley, its agent and attorney, claims the above named steamers "Walter
11 Adams", "Alaska", "Arizona", "George Curtis", "Montauk", "Quickstep" and "Ranger" and prays to defend this suit accordingly.

GARDNER, PRICE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for the Claimant.

DISTRICT OF RHODE ISLAND,

City and County of Providence:

William H. Thornley, being duly sworn, says that the Seaboard Fisheries Co. is the true and bona fide owner of the steamers "Walter Adams", "Alaska", "Arizona", "George Curtiss", "Montauk", "Quickstep" and "Ranger" against which this suit has been commenced by Piedmont & Georges Creek Coal Co., libellants; that no other person is the owner of said steamers; that for the purposes of this suit deponent is the agent of the owner and is duly authorized by said owner to put in its claim.

WILLIAM H. THORNLEY.

Sworn to, before me, this twenty-first day of June, A. D. 1914.

J. WESLEY BINNING,
Notary Public.

12 *Claimant's Stipulation to Abide by and Pay the Decree.*

(Filed in Consolidated Cause #1359,) July 23, 1915.

Whereas, certain intervening libels were filed on the 4th day of December, A. D. 1914, by the Piedmont & Georges Creek Coal Company against the fishing steamers William B. Murray, Martin J. Marran, Rollin E. Mason, Herbert N. Edwards and Amagansett, for the reasons and causes in the said intervening libels mentioned and set forth, and numbered as above set forth on the docket of this court; and

Whereas, a libel was filed on the 18th day of June, A. D. 1915, by said Piedmont & Georges Creek Coal Company against the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, for the reasons and causes in said libel mentioned; and numbered 1359 on the Admiralty Docket of said Court; and

Whereas, actual taking into custody of said fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger was waived as appears by stipulation on file, provided a claim be filed thereto and the bond in said stipulation mentioned; and

Whereas, all of said intervening libels were on the 22nd day of June, by order of the Court, consolidated with said Admiralty cause No. 1359, as appears by the Order of the Commission now on file in said causes, respectively; and

13 Whereas it is further provided in the Order of Consolidation in each of said intervening libels against the said William B. Murray, Rollin E. Mason, Herbert N. Edwards, Martin J. Marran and Amagansett that the stipulators on the Stipulation for value filed in said intervening cases, respectively, should be released and discharged from any liability under their said stipulation, upon filing in said consolidated cause a bond in the sum of Nineteen Thousand Dollars, with good and sufficient surety, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as might be allowed to the Libellant; and

Whereas, claim has been filed to said fishing steamers Walter Adams, Alaska, Arizona, George Curtis, Montauk, Quickstep and Ranger, named in said cause No. 1359, by the Seaboard Fisheries Company, a corporation organized under the laws of the State of New York, and the said Claimant and the said Equitable Surety Company, a corporation organized under the laws of the State of Missouri and having its principal place of business in the City of St. Louis in said State, its surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the Claimant or its surety, execution may issue against their goods, chattels and lands for the sum of Nineteen Thousand Dollars, together with interest from the day of the date hereof:

Now, Therefore, it is hereby stipulated and agreed, for the benefit

14 of whom it may concern, that the stipulators undersigned, are, and each of them is bound in the sum of Nineteen Thousand Dollars, together with interest from this date; conditioned that the Claimant abide by and perform all of the orders of the Court, interlocutory or final, and pay the amount of the judgment awarded by the final decree rendered in said consolidated cause by this Court, and in each and every one of said intervening libels consolidated as aforesaid, rendered by this Court, or in case of appeal by the Appellate Court.

(Sgd.)

SEABOARD FISHERIES CO.,
By GARDNER, PIRCE & THORNLEY,
WM. H. THORNLEY,
Proctors for Assignees of
Claimants Seaboard Fisheries Co.
EQUITABLE SURETY COMPANY,
By WILLIAM M. P. BOWEN,
Attorney in Fact.

Assented to:

FRANK HEALY,
Proctor for Libellant.

15 *Answer of Seaboard Fisheries Company.*

(Filed in Consolidated Cause #1359,) July 9, 1915.

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

Seaboard Fisheries Co., a corporation organized under the laws of the State of New York and having its place of business in the City of New York in said State, the claimant of the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger as the same are proceeded against on the libel of Piedmont & Georges Creek Coal Company in a cause of contract, civil and maritime, answers said libel and complaint as follows:

First. It admits the allegations of Article First of said libel.

Second. It admits the allegation of Article Second of said libel, that the Atlantic Phosphate & Oil Corporation, hereinafter called "said corporation", was the owner of the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, and further admits that said corporation was indebted on an open account to said libellant, but upon information and belief it denies each and every other allegation contained therein.

Third. Upon information and belief it denies the allegation of Article Third of said libel, that coal was furnished to the Atlantic Phosphate & Oil Corporation in pursuance of the contract as stated or that coal was furnished solely for the use of the said vessels.

16 but admits that coal was furnished to said corporation at the time and in the amount stated and alleges that it was so furnished for its general purposes and not solely for the use of said vessels, and it further denies upon information and belief that the

reasonable and agreed value of said coal was as stated in said Article Third of said libel.

Fourth. Upon information and belief it admits the allegation of Article Fourth, that coal so delivered and furnished was used by said corporation in the operation of its fishing fleet but alleges that only part of the coal was so used and that it is impossible to determine which part of said coal was so used, and denies that the said coal was furnished to and for the use of the said steamers but alleges that it was furnished to said corporation for its general purposes and put into its stock in hand and when used by said steamers was withdrawn from the stock of coal then on hand in the possession of said corporation.

Fifth. It denies the allegation of Article Fifth of said libel.

Sixth. As requested in Article Sixth of said libel, the claimant will inform the Court as to the specific amounts used by each of said vessels and withdrawn from the general stock of coal owned by the said corporation.

Seventh. It admits the allegation of Article Seventh of said libel.

Eighth. It admits that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but denies upon information and belief that all and singular the premises as stated in said libel are true.

17 Ninth. Further answering said libel, the claimant alleges upon information and belief that the coal mentioned in said libel was billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libellant called at the office of said corporation and introduced or procured the agents or employees of said corporation, without authority from said corporation, to alter the bills for said coal by pasting on the bills on file in the offices of said corporation a type-written bill-head purporting to show that said coal had been shipped to five steamers not included within this libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of any steamers or for delivery to any steamers.

The claimant further alleges upon information and belief that in addition to said open account against said corporation, the libellant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars (\$2020.02) due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft to Proctor & Gamble in the sum of Two Thousand Dollars (\$2,000.) to the libellant as a payment upon the open account with said libellant, for which the said libellant now claims a maritime lien against said steamers, and was accepted as such payment by said

libellant; that said draft was paid but that the amount thereof
18 was not credited on the open account but was credited on the

said notes secured by mortgage bonds heretofore referred to.

Tenth. Further answering said libel the claimant alleges:

That all of the vessels included within this libel were described in and subject to a certain mortgage or deed of trust given by the Atlantic Phosphate & Oil Corporation to the Astor Trust Co. as Trustee, known as the refunding Gold Bond Mortgage of the Atlantic Phosphate & Oil Corporation, bearing date July 1, 1913.

That on the Twenty-ninth day of December, 1914, a bill of complaint praying for a foreclosure of and sale under said mortgage was filed in this Court by the Astor Trust Co. as Trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation et als, Defendants, said cause appearing on the files of this Court as Equity No. 45, that said cause was thereafter consolidated with and now appears on the files of this Court as "Waldemar Schmidtman, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44."

That thereafter on the eighth day of March, 1915, a decree of foreclosure and sale under said mortgage was entered in the above entitled consolidated cause, and subject to the provisions thereof all of the vessels included within the above libel and subject to said mortgage as aforesaid were sold at public auction on the twenty-fourth day of April, 1915, by the Receivers of the Atlantic Phosphate & Oil Corporation, acting as Special Masters under and by virtue of said decree; that said vessels were purchased at said sale by J. Treadwell Bullwinkle, acting for and on behalf of the Seaboard Fisheries Co., a corporation organized under the laws of the State of New York and having an office in the Borough of Manhattan in the City and State of New York, the said Seaboard Fisheries Co. being the claimant herein; that the said vessels were conveyed and transferred by said Special Masters to said Seaboard Fisheries Co. by separate bills of sale dated May 29, 1915.

That therefore, and long prior to the sale and purchase of said vessels as herein set forth, to wit, on the fourth day of December, 1914, the said libellant had filed intervening libels in this Court against five other vessels formerly owned by said corporation, namely, Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray, alleging that it had a maritime lien against said five vessels for certain shipments of coal, which shipments, claimant alleges, include the coal referred to in this libel. The said libellant alleged in said five intervening libels that the said coal was delivered to said corporation solely on the credit of the said five vessels and was delivered to the said five vessels, as will appear by the intervening libels filed against said five vessels, which causes have been consolidated with this cause and are a part of the record herein and are hereby referred to for all purposes.

The claimant alleges, therefore, that the said libellant had elected to claim a lien upon the said five vessels not included within this libel and has not revoked such election but on the contrary has gone to a hearing thereon before this Court, nor did the said libellant file this libel or claim against the vessels named herein until long after the purchase of said vessels at public auction by said claimant although

it, the said libelant, had full knowledge of the proposed sale of said vessels and that therefore said libelant should not be allowed to recover herein.

The said claimant claims the benefit of the foregoing allegations by way of an exception as well as by way of answer to said libel.

Eleventh. That all and singular the premises are true.

Wherefore the claimant prays that said libel may be dismissed with costs.

SEABOARD FISHERIES CO.,

By GARDNER, PIRCE & THORNLEY,
WM. H. THORNLEY,

Proctor.

STATE OF RHODE ISLAND,

County of Providence:

William H. Thornley, being duly sworn, says: I am a member of the firm of Gardner, Pirce & Thornley, proctors for the claimant herein; the foregoing answer is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation and of the Receivers thereof and of the said claimant.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of July, A. D. 1915,

J. WESLEY BINNING,

Notary Public.

21 District Court of the United States of America, District of
Rhode Island, Providence, R. I., June 14, 1915.

In Admiralty. No. 1334.

BENJAMIN MARCHANT et al., Libellants,

vs.

FISHING STEAMER "HERBERT N. EDWARDS," Libellee.

Before Brown, Judge.

(Filed in the Consolidated Cause No. 1359.)

Appearances:

For the Libellants, Convers & Kirlin, Esqs., John M. Woolsey,
Esq.; H. B. Campbell, Esq.; Frank Healy, Esq., of counsel.

For the Libellees, Gardner, Pirce & Thornley, Esqs., P. S. Collette,
Esq.

Evidence for Libellant.

By the Court: Numbers 1336, 1333, 1334, 1329 and 1327—all
the cases to be heard together—involving the same questions?

22 Mr. Woolsey: Yes.

By the Court: There are no questions of fact?

Mr. Woolsey: We have testimony to present.

By the Court: And the same counsel appear in all cases?

Mr. Healey: Yes, sir.

Mr. Woolsey: These five libels are brought for the value of coal
furnished to the Atlantic Phosphate & Oil Corporation during the
fishing season of 1914. The situation was that at the beginning of
that season the Atlantic Corporation, being in difficulties and not
having been able to discharge a coal bill that it owed to the libellant
for the previous year or get any credit for coal, suggested to my client,
the Piedmont & Georges Creek Coal Company, that they should
furnish coal to the Atlantic Phosphate & Oil Company on the credit
of a maritime lien against their entire fishing fleet, and offered as
security for the coal to be furnished a maritime lien on their entire
fleet. It was solely on the credit of this agreement that the coal was
shipped partly to Promised Land, a small town on the southern
coast of Long Island, and partly to Tiverton, R. I., and thereafter,
when the company was unable to discharge these maritime liens,
and pay my client, in order not to tie up the entire fleet, and by
agreement between the parties, the particular boats here mentioned
were held bound to the lien and the other liens against the other
boats were not pressed, and so we come here on an agreement for
maritime liens as security for coal furnished to this fishing fleet, to
be specifically enforced against these five vessels, all the vessels hav-

ing been bound by the agreement. That is the situation, as I understand it. There are practically no contraverted questions of fact at all.

23 By the Court: Do I understand that these libels are not for coal furnished to particular vessels?

Mr. Woolsey: As far as the coal went to the particular vessels, just how much we shall have to prove—we have witnesses here to prove that some of the coal, at least, went to these particular vessels. It was all furnished on a general agreement to give us a maritime lien on all the vessels of the fleet in consideration of our furnishing coal for their use, the use of the company.

By the Court (to Claimant's Counsel): Have you any statement to make in regard to the issue?

Mr. Gardner: The suggestion that there are no controverted questions of fact, I think, is hardly warranted. There are facts which have a bearing upon the case which we shall undoubtedly want to present evidence upon and hear evidence upon, if it is desirable at this time, and if so, to state our position and to make the subsequent proceedings a little more clear, we represent, as claimants here, Mr. Oeland and Mr. Cox, who are ancillary receivers in this district for the Atlantic Phosphate & Oil Company, and who are receivers in the suit of the Astor Trust Company, Mortgagee in Trust under a mortgage covering these vessels against which it is sought to establish a lien, and those two suits have been consolidated. All the facts, I presume, with reference to those matters that have a bearing upon this case are before the Court.

By the Court: A mortgage preceding any lien?

Mr. Gardner: Our mortgage preceding any agreement for lien whatever, and our position would be there has been no coal furnished to these steamers which it is sought to libel; that the coal had all been furnished to the Atlantic Phosphate & Oil Company and having been so furnished was used in part for the running of the

24 different plants at Promised Land and at Tiverton, and in part for those vessels, and in part for other vessels making up the fleet of the company. The controverted questions of fact, I presume, would be as to the special agreement which was claimed to have been made. We should hold that even though the facts were as claimed by the libellant there was, as a matter of law, no lien upon these vessels, but subject to the questions of law there are certain facts here which ought to be established.

By the Court: The question of a lien, a maritime lien, on a fleet, as distinguished from a lien on vessels to which coal was furnished directly, is a new one.

Mr. Woolsey: I think it is not entirely a novel question. There has been a number of decisions and it is universally held, I believe, that the owner of vessels may pledge them by way of maritime liens for anything that he desires and after having done that he is estopped to deny the lien.

By the Court: The point is whether it would apply to the fleet. We have had no such question in this jurisdiction. So far as there

was a subsequent agreement, a particular agreement, and in pursuance of that agreement certain things were done, that would be one question, but whether it is not essential, in order that there be a maritime lien, there should be supplies actually furnished to the specific vessels, I would like to be enlightened by counsel on that point as it is a new one to me in this jurisdiction.

Mr. Woolsey: I think we have authorities, sir, that will satisfy you that that is a regular procedure which is often resorted to.

By the Court: I think we have had, in the court of appeals, some agreements of that kind, but the specific question which arises in this case I do not think was ever before this court.

25 Mr. Woolsey: I was not able to find any case where it has ever been before this court. Shall I call my witnesses?

By the Court: If you please.

THOMAS C. MEADOWS is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Meadows, what is your present place of residence?

Ans. Near Bating Hollow, Long Island.

Q. 2. What are you engaged in doing now?

Ans. I am managing vessels, fishing vessels and directing the Fishing Globe, New York.

Q. 3. The Globe newspaper?

Ans. Yes, sir.

Q. 4. What was your position in January and February 1914?

Ans. I was manager of the Atlantic Phosphate & Oil Corporation.

Q. 5. How long had you been active manager of that concern?

Ans. Most active since the previous August, but more or less active for two or three years previous to that.

Q. 6. Had you had dealings with the Piedmont & Georges Creek Coal Company in the year 1913?

Ans. I had.

Q. 7. In that connection did you meet Mr. Bohannon?

Ans. I did.

26 Q. 8. What was the situation as to the account of the Piedmont & Georges Creek Coal Company in February, 1914?

Ans. There was an unpaid balance of several thousand dollars which had been settled by a note some time in the summer of 1914, secured by bonds of the Atlantic Phosphate & Oil Corporation.

Q. 9. What was the actual condition of the Atlantic Phosphate & Oil Corporation in February 1914?

Ans. It was in the position of having approximately \$75,000 or \$100,000 of the accounts of the previous year unpaid, which they were unable to pay.

Q. 10. Was it practically ripe for a receivership at that time?

Ans. The receivership papers had been prepared by the attorneys of the Atlantic Phosphate & Oil Corporation in the fall of 1913 and some of the creditors had been urged to bring receivership proceedings, but hadn't done so.

Q. 11. So you were practically living on your creditors in 1914?
Ans. At the sufferance of them.

Q. 12. Was it necessary for you to have coal to run your operations during 1914?

Ans. It was.

Q. 13. How many vessels did you have?

Ans. We had, I believe 19 all told.

Q. 14. What proportion of those vessels were coal consuming vessels?

Ans. All of them—all of the 19.

Q. 15. Did Mr. Bohannon call on you any time during February 1914, in an attempt either to collect this balance or make some working arrangements with you in regard to it?

Ans. He called regarding his account. I endeavored to make an arrangement with him for coal for the succeeding season.

27 Q. 16. Did you take up the question of coal for the season of 1914?

Ans. I did.

Q. 17. What did you offer him with regard to that coal, in your first proposition?

Ans. I told him that the company still had some of the bonds in its treasury such as had been pledged to secure his previous year's account, and on purchases for the year 1914 if he would be satisfied with those bonds as collateral we could give them as security.

Q. 18. What was Mr. Bohannon's reply to you? Did he have to refer back to some one?

Ans. He said he would refer it to Mr. Brophy, the president of the company.

Q. 19. Did you afterwards see Mr. Bohannon?

Ans. Yes. Mr. Bohannon returned some two weeks later, I think, and reported Mr. Brophy was not willing to make a contract based on the bonds as the only security.

Q. 20. What further transpired?

Ans. I told him, as I understood the law, that we had a perfect right to use the credit of the steamers in the acquisition of coal and if he would be willing to furnish coal we would be perfectly willing that he hold and maintain a maritime lien on the steamers.

Q. 21. Was that of the entire fleet?

Ans. Yes; on all the boats.

Q. 22. Well, what happened thereafter?

Ans. He referred that to Mr. Brophy and Mr. Brophy accepted the proposition on that basis.

Q. 23. That was a maritime lien on your entire fleet should be security on which he was to furnish coal?

Ans. Yes.

Q. 24. That was your understanding of it?

Ans. That was my understanding of it.

28 By the Court: Any written agreement?

Mr. Woolsey: No, sir; there wasn't any written agreement.

There were some letters exchanged which subsequently showed how the matter stood and in respect to one or two of the cargoes there was a written agreement.

Q. 25. Now, Mr. Meadows, was coal subsequently furnished to you in pursuance of this agreement?

Ans. Yes.

Q. 26. Can you state when it was furnished?

Ans. By looking at my orders—there were 9 cargoes all told, as I recall it.

Q. 27. There were 9 cargoes all told?

Ans. Yes, sir.

Q. 28. Will you look at these documents which I hand you and state whether those are your orders under which the coal was delivered?

Ans. I see there is only 8 here—yes; here is 9. There are 9 invoices, I think.

Q. 29. Nine invoices and 8 orders shown there?

Ans. That is right.

Mr. Woolsey: Apparently we have not got a copy of the other order—have you got a copy of the last order?

Mr. Thornley: There are five orders involved in this suit.

Mr. Woolsey: That is one of them. I thought we had a carbon copy of it. We can just put it in to make a complete file, if you don't mind.

The Witness: Those are the orders.

Mr. Woolsey: I should like to have those nine orders marked in evidence as our exhibits.

29 (The orders referred to are marked collectively "Exhibit 1".)

Q. 30. Now, Mr. Meadows, it was the understanding between you and the Piedmont and Georges Creek Coal Company that all the coal furnished under those orders should constitute a maritime lien against the vessels.

Ans. That was our agreement.

Q. 31. Were there any payments made on any of these orders?

Ans. There were two—two of the shipments were paid for.

Mr. Woolsey: Can't we agree that cash was paid in respect to the order on the Crystal for 1068 tons, \$3524.40, the third and fourth shipments.

The Witness: I can testify to that if you want me to.

Q. 32. Did you pay for a third shipment on the Barge—Crystal?

Ans. The third and fourth cargoes—the third and fourth cargo shipped in pursuance of this arrangement were paid for.

Q. 33. In full?

Ans. In full.

Q. 34. The first two cargoes on the Barge Crystal and the R. E. Mason—will you state what was done in regard to that?

Ans. There were notes given with bonds attached as collateral.

Q. 35. Where were those notes given and where were the bonds attached?

30 Ans. We were able to get a little better terms as the bills would not come due so early by giving papers that they could use at their banks.

Q. 36. In other words, in your "giving them paper that they could negotiate, they were willing to allow the time to be extended within which payment should be made?"

Ans. Yes.

Q. 37. That was in respect to the first two cargoes?

Ans. Yes.

Q. 38. Now, as to the last five cargoes, that is, on the Harry Husted, on the Crystal, the Rhode Island and the H. Walker, and the Rhode Island a second time, will you state what was done in regard to those?

Ans. Those were deliveries, shipment made along in the month of May with the specific dates for cash settlement stipulated in, no collateral given, nor no notes.

Q. 39. What subsequently happened in regard to these five notes, were they ever paid?

Ans. They were not.

Q. 40. Did the Atlantic Phosphate & Oil Company, at the time when you made this agreement for the Maritime lien in consideration of the coal being furnished, own the boats—Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray?

Ans. They did.

Q. 41. Were they among the 19 boats you mentioned?

Ans. They were.

Q. 42. Were those five boats among the boats which were pledged by your agreement by way of a maritime lien for the coal furnished?

Ans. They were considered the best of the 19.

Q. 43. Were they all included in that pledge of maritime lien?

Ans. They were.

31 Q. 44. Now, subsequently did you have any correspondence or any conversation with Mr. Bohannon or Mr. Brophy with regard to impressing the liens which you had agreed for on these five boats?

Ans. Yes. When the bills came due and we had given them one or two checks which we were unable to make good, Mr. Brophy came over to force collection, at least, that is what he stated, and to establish,—to bring action under his liens we had on the boats, and at our earnest solicitation we prevailed upon him not to enforce his lien at that time. He agreed to hold the matter in abeyance for a few days, and did permit it to string along a little while.

Q. 45. Then what happened?

Ans. Well, finally, he did string it along until finally the receivership happened and then he started to enforce his action and enforce his liens on the boats, in the meantime, however, we were arranging for an extension. He had been threatening to tie up the whole fleet. I prevailed upon him to exclude from his actions he was threatening to bring as many of the boats as he was willing to exclude so that we might have something to operate with even though he tied up part of the fleet. It was at my solicitation that he selected the five best boats as ample security for his claim—in case he would bring action for his collection he would not tie up the other.

Q. 46. What was done in regard to making a record of the selection of these five boats as the boats against which the liens were to be impressed?

Ans. There was letters exchanged in which we specifically recognize our obligation and our agreement with these gentlemen that prior liens did exist, and those were selected as five boats that the liens should be enforced against if he saw fit to bring action, and in that letter there was some approximate statement as to the total
32 amount of other liens that existed against these five boats.

Mr. Woolsey: Have you got the letter of September 11, our original letter, to the Atlantic Phosphate & Oil Company?

Mr. Thornley: Yes, sir.

Mr. Woolsey: May I have that? I will give you a copy in return. And there are also one or two other letters, Mr. Thornley—the letter of June 26th, the letter of July 15th.

Q. 47. Had you seen Mr. Brophy at New York prior to his writing you the letter in September, that you speak of?

Ans. Yes; I think he had been there.

Q. 48. Well, had there been any record made on your books as to the boats to be chargeable for these liens, the boats against which the liens were to be impressed?

Ans. There had been no singling out of vessels, nothing except the entire fleet had been referred to prior to his visit.

Q. 49. Then, what was done in regard to making a record as to these five boats against which the proceedings were to be enforced?

Ans. Well, following his conference it was agreed that he should have his invoices billed, one invoice against one of the five new boats which we recognized as the best boats.

Q. 50. Will you tell the Judge what happened, how this was done?

Ans. Mr. Bohannon came to the office with the invoices made out as Mr. Brophy and I had agreed they should be made out.

33 Q. 51. In the same proportion as contained in these libels?

Ans. Yes; just as they are in the libels. When we came to substitute them for the existing invoices which had already been rendered we found on the existing invoices the bookkeeper's notations, the stamps with the "O. K." with the different initials on them, and we realized that an effort would have to be made to reproduce those, but instead of doing that the bill heads were simply torn out and pasted to the original invoices.

Q. 52. Do you remember the date of this?

Ans. I think it was either the early part of September or the end of August.

Q. 53. Here is a letter of September 11, 1914. Did you receive that?

Ans. Yes.

Q. 54. And were you, at that time, vice-president of the company?

Ans. I was.

Q. 55. Did you reply in accordance with this letter on September 15th?

Ans. Yes. That is my reply.

Mr. Woolsey: I would like to have these marked in evidence as Exhibits 2 and 3—"Exhibit 2" is the letter of September 11th; and "Exhibit 3" is the reply.

Q. 56. By whom was this change in the invoice made?

Ans. It was made by us.

Q. 57. Made by you?

Ans. Yes.

Q. 58. And was the making of that in pursuance of the prior agreement with regard to the maritime lien?

34 Ans. Pursuant to that, and picking out five vessels instead of the lien continuing against the whole set of 19.

Mr. Woolsey: That is all.

Cross-examination by Mr. Gardner:

C. Q. 59. Mr. Meadows, I understood you to state that at the close of the year 1913, and in the month of February, 1914, the Atlantic Company, of which you were an officer, had some \$75,000 of unpaid accounts outstanding which you were unable to discharge?

Ans. Those were the current accounts. They had a good deal more indebtedness than that.

C. Q. 60. And it was on the verge of a receivership?

Ans. Yes.

C. Q. 61. And so recognized?

Ans. Yes.

C. Q. 62. And that receivership papers had actually been prepared?

Ans. That is my understanding.

C. Q. 63. These facts were communicated by you to the officers of the Piedmont Company at the time of your first interview with them?

Ans. Yes. They knew it.

C. Q. 64. And is it also true, Mr. Meadows, that at the date mentioned the Trust Mortgage to the Astor Trust Company, covering the five boats, the vessels which it is here sought to libel, and other vessels of the company, was in existence and outstanding?

Ans. Yes, sir.

C. Q. 65. Now, can you fix definitely at all the date of your first interview with Mr. Bohannon with reference to their furnishing coal for the season of 1914?

35 Ans. It was the first half of February, I think.

C. Q. 66. Early in February?

Ans. Yes.

C. Q. 67. And at that time arrangements were made for the supply which your company would need for the season?

Ans. No. A proposition was made which, as I have testified, Mr. Brophy would not accept, and then in March, I think, the arrangements were finally consummated.

C. Q. 68. The matter was taken up by the Piedmont Company to supply your company with all the coal they might need for the season of 1914?

Ans. That is right.

C. Q. 69. And your company, as I understand it, had plants at Promised Land and at Tiverton?

Ans. Yes.

C. Q. 70. And certain of this coal was used in those plants?

Ans. Yes, sir.

C. Q. 71. And certain of the coal was used for the entire coal consuming fleet of the company?

Ans. That is right.

C. Q. 72. Which amounted to some 19 vessels?

Ans. That is the total fleet, I think there were only 17 or 18 in actual operation.

C. Q. 73. Now, at that time, if I understand you correctly, you said that an offer was made to Mr. Bohannon to pay for this coal which they might furnish with notes of the company secured by its bonds?

Ans. That is the first proposition made.

C. Q. 74. That is the first proposition?

Ans. Yes.

C. Q. 75. And that he desired to consult Mr. Brophy in reference to that?

Ans. Yes.

36 C. Q. 76. And he subsequently returned and told you that Mr. Brophy was not satisfied with that arrangement?

Ans. That is right.

C. Q. 77. But nevertheless, as a matter of fact, you did pay for the first cargo which was shipped to you in 1914 by the giving of your notes and bonds to secure them, did you not?

Ans. But with a memorandum stating that the lien was also retained.

C. Q. 78. As a matter of fact, you gave your notes and bonds securing the notes?

Ans. We did.

C. Q. 79. In payment of the first cargo?

Ans. First two.

C. Q. 80. And those first notes given for those first two cargoes were subsequently paid?

Ans. No.

C. Q. 81. They are outstanding still?

Ans. Still outstanding.

C. Q. 82. Now, you say a memorandum was made at that time of the arrangement with reference to furnishing and payment for these cargoes?

Ans. Yes; payment of the first cargo, this was a memorandum.

C. Q. 83. Is that (indicates) the memorandum to which you refer in your testimony?

Ans. Yes; this is it.

Mr. Gardner: I would like to have this marked for identification, your Honor please.

C. Q. 84. Now, after the first and second cargoes were furnished and paid for by notes, as you have stated, the third and fourth cargoes were also furnished?

37 Ans. They were furnished, yes.

C. Q. 85. Now, was it prior to the furnishing of the third and fourth cargoes that the arrangement was made as to which you have testified as to the times when payments should be made?

Ans. Yes. There was specific settlement dates of those two cargoes.

C. Q. 86. Of those two cargoes alone?

Ans. On every cargo subsequent.

C. Q. 87. On every subsequent cargo?

Ans. Yes.

C. Q. 88. After the first and second cargoes had been furnished an agreement was made as to certain payments to be made covering all the rest of the shipments?

Ans. Exactly.

C. Q. 89. And the shipments made by the third and fourth cargoes were paid for in cash in accordance with the terms of that arrangement?

Ans. Approximately, I believe they may have been a day or two past due, something of that kind, but they were paid in full, in cash.

C. Q. 90. That is the third and fourth?

Ans. Third and fourth.

C. Q. 91. Then the balance which became due as the last five cargoes were subsequent, the fixed payments were not made?

Ans. They were not.

C. Q. 92. And then Mr. Bohannon came to see you, to see what arrangement was to be made to secure them?

Ans. No. He came to see me most every day to get his checks. Sometimes he got them, sometimes they were not paid. They were not secured though at all.

38 C. Q. 93. At some time, as you have testified, an arrangement was made whereby security was given or sought to be given to them, upon those five vessels which are here sought to be libelled?

Ans. Yes. That was prior to the shipment of the cargo.

C. Q. 94. Prior to the shipment?

Ans. In each instance.

C. Q. 95. Well, was such an arrangement made prior to the shipment of the third and fourth cargo?

Ans. Yes.

C. Q. 96. With these five vessels—the Edwards and the others—were picked out—

Ans. The entire fleet was pledged, the lien was held—

Mr. Woolsey: Mr. Gardner, I may suggest Mr. Meadows doesn't understand. You were talking about singling out those five vessels.

Mr. Gardner: I understood Mr. Meadows to state that almost at the inception of the proceeding it was agreed generally that the Piedmont Company should have a maritime lien upon the vessels of your company.

The Witness: Not generally.

C. Q. 97. But that no specific vessels were picked out.

Ans. It was agreed specifically they should have a lien on the vessels that would operate consuming coal.

C. Q. 98. On all the vessels?

Ans. That was an agreement made at the time the coal was arranged for.

C. Q. 99. Now, when the payments which became due were not met I understood you to state you had an interview with Mr. Bohannon as the result of which certain vessels were selected?

Ans. No. I had a conference, other conferences with Mr. Bohannon, but it was when Mr. Brophy finally, the president of

39 the company, who came over, after special conferences with Mr. Bohannon came over and was proceeding to tie up the entire fleet. He was going to bring proceedings under his maritime lien to tie up the entire fleet. As a result of my conference with Mr. Brophy it was agreed that five of the best boats should be singled out for him to tie up and he would not enforce his liens on the remainder.

C. Q. 100. Exactly: Now at this conversation with Mr. Brophy was Mr. Bohannon also present?

Ans. Yes.

C. Q. 101. He made the threat, as I understand it, or announced his intention to institute proceedings to enforce a maritime lien against all your vessels?

Ans. Yes. It was not a threat.

C. Q. 102. He announced his intention?

Ans. Yes.

C. Q. 103. He hadn't instituted any proceedings?

Ans. Not up to that time.

C. Q. 104. And at that time all the coal which was furnished to you during the year 1914 had been furnished?

Ans. All that had been furnished by the Piedmont Company.

C. Q. 105. All that had been furnished by the Piedmont Company had been furnished?

Ans. No; I don't think that is true. I think we purchased some from them even as late as October but we paid for it cash.

C. Q. 106. All the coal which is covered by this proceeding here?

Ans. Yes.

C. Q. 107. For which payment is sought to be made here, your lien is sought to be obtained?

Ans. Yes.

C. Q. 108. And that had been furnished at that time?

40 Ans. It had.

C. Q. 109. And up to that time your agreement with the Piedmont Company had been that they should have a lien upon your vessels generally?

Ans. Upon all the vessels.

C. Q. 110. Up to that time no special vessels had been mentioned?

Ans. Yes; each had been mentioned.

C. Q. 111. Each of the 19?

Ans. Each of the 17.

C. Q. 112. But none had been picked out to be made the subject matter of the lien?

Ans. Yes; they had all been picked out. The only difference as we say absolutely, the only difference that resulted from Mr. Brophy's conference was that we induced him to bring his action against 5 boats instead of against the 17.

C. Q. 113. And those five were first mentioned and made during the course of these negotiations after the coal had all been furnished?

Ans. No. They had been named as part of the 17.

C. Q. 114. But they had been picked out and set aside as the subject matter of a lien after this coal had been furnished?

Ans. I can't say that the situation with reference to the five boats had been changed at all as a result of that conference. It is only the 12 that were excluded as a result of that conference.

C. Q. 115. At any rate the names of those boats were first mentioned at that time?

Ans. No, sir; that is not true.

C. Q. 116. The names of those boats subject to the lien were first mentioned at that time?

Ans. That is not true.

41 C. Q. 117. The names of those boats as the only boats to be made subject to the lien were first mentioned at that time?

Ans. The names of the other 12 boats were first excluded at that time.

C. Q. 118. Well, put it that way: Now during those negotiations and as preparatory to the selection of the vessels upon which a lien was to be established, did Mr. Brophy or Mr. Bohannon go with you to Promised Land?

Ans. Yes.

C. Q. 119. Did they there look over your plant?

Ans. They did.

C. Q. 120. Including these vessels?

Ans. Yes.

C. Q. 121. Did you, at that time, show them a report of the American Appraisal Company as to the value of your assets?

Ans. Not at Promised Land; they had seen that months before, I think.

C. Q. 122. But after the return from Promised Land?

Ans. I don't know.

C. Q. 123. At any time during the course of these negotiations they saw and read the appraisal report?

Ans. I don't know whether it was before or after.

C. Q. 124. And they picked out those five boats as being the most valuable of your fleet?

Ans. I think they took my word for that.

C. Q. 125. You told them that?

Ans. Yes.

C. Q. 126. But they did examine the report of the Appraisal Company?

Ans. They saw it.

C. Q. 127. In that report the value of these boats was given?

Ans. It was.

C. Q. 128. Now, prior to that time you, of course, had received invoices for the five cargoes for which a lien is now sought?

Ans. That is right.

C. Q. 129. And how were those invoices, when they came to you, made—to whom?

Ans. The Atlantic Phosphate & Oil Corporation.

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Are not the orders in?

Mr. Woolsey: The orders are in but not the invoices, but I object to the question of how they were billed as being irrelevant and immaterial on the question of the liens.

Mr. Gardner: As a matter of fact, as the witness has already testified, your Honor, please, after this arrangement was made where the five vessels were selected as being the subject matter of the lien, the invoices which they had received were changed—the top of them was torn off—and we wish to show in what condition they were when they originally reached this company.

By the Court: You may inquire.

C. Q. 130. (By Mr. Gardner:) You have already stated, I think, that they were made out to the Atlantic Phosphate & Oil Corporation?

Ans. Yes, sir.

C. Q. 131. And no vessel was named anywhere in those invoices?

Ans. No. It simply said "as per agreement."

C. Q. 132. "As per agreement"?

Ans. Yes.

C. Q. 133. Now, when those vessels were selected by the officers of the Piedmont Company as the subject matter of these liens were the headings of these five invoices torn off or removed and other headings substituted?

Ans. Yes, sir; we did that.

C. Q. 134. Now, I show you the invoice of the shipment of May 19, 1914, for coal loaded in the boat Harry Husted, Port Reading, New Jersey, with papers accompanying the order and the acceptance, and ask you whether that invoice as originally received by you was made out simply to the Atlantic Phosphate & Oil Corporation?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

Ans. Yes, sir.

C. Q. 135. (By Mr. Gardner:) And you say that there was also added to the name of your company the words "as per agreement"?

Ans. My recollection is that it was on the invoice, I don't know whether it was here or there (indicates). My recollection was that it appeared on the invoice but I won't swear to that.

C. Q. 136. Were those uniform?

Ans. Yes.

C. Q. 137. I show you invoice of the shipment made May 12th, which you testified has been paid for, and ask you if there is any mention as to the "as per agreement" on that?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

44

Ans. There is not.

C. Q. 138. (By Mr. Gardner:) Was not the invoice of May 19th, as it originally came to you, made out simply to Messrs. Atlantic Phosphate & Oil Corporation, 165 Broadway, New York City, as the invoice of May 12th, 1914, was made out?

Ans. Possibly.

Mr. Woolsey: May I take an objection on the same ground? I don't want to interrupt the proceeding if I may reserve an objection generally.

By the Court: State your general objection.

Mr. Woolsey: My general objection is irrelevancy and immateriality as to what form these bills were sent. He has testified to the agreement for a maritime lien, and it is immaterial whether they were billed against one boat, or not, it is immaterial.

By the Court: You mean, from your point of view.

Mr. Woolsey: From my point of view it is purely a matter of bookkeeping and under the lien law——

By the Court: I think it is very material.

Mr. Woolsey: May I have my objection general?

By the Court: Yes.

C. Q. 139. (By Mr. Gardner:) And that invoice of May 19th, as it now stands, is made out against Steamer Herbert N. Edwards, and Owners, is it not?

Ans. Yes, sir.

C. Q. 140. And this change in the invoice was made at the time this plan for establishing a lien was under discussion—it was made

by tearing off the original invoice and pasting on in place of that torn off another and different heading?

45 Ans. No. There were new invoices entirely prepared and submitted and asked to be substituted or suggested that it should be submitted for the one we had on our records—the account record of the office and the invoices—that was not followed.

C. Q. 141. And the plan that was followed was removing the heading and substituting another heading?

Ans. That is quite true.

Mr. Gardner: I ask that these may be marked for identification, your Honor please.

By the Court: The first one is marked "Defendant's X 1 for Identification"; and the second "Defendant's X 2 for Identification".

C. Q. 142. (By Mr. Gardner:) Now, I show you an invoice of May 23, 1914, for coal loaded into boat Crystal at Port Reading, New Jersey, made out now to the Steamship, Rollin E. Mason and Owners, and ask whether that invoice as it originally came to you was made out as the other—simply to the Atlantic Phosphate & Oil Corporation?

Ans. So far as I can recall.

Mr. Gardner: I will offer this.

By the Court: "Defendant's X-3 for Identification".

C. Q. 143. (By Mr. Gardner:) I now show you an invoice of June 9, 1914, for coal loaded into boat Rhode Island, at St. Georges Coal Pier, Staten Island, New York, which now appears as made out against Steamship, Martin J. Marran & Owners, and ask whether that, as it originally came to you was made out simply against your company?

Ans. That is my recollection.

46 Mr. Gardner: I will offer this.

By the Court: "Defendant's X-4 for Identification".

C. Q. 144. (By Mr. Gardner:) I show you another invoice dated June 20, 1914, for coal loaded in the boat H. Walker, at St. Georges Coal Pier, Staten Island, New York, made out to the Steamship Amagansett & Owners, and ask you whether, when it was originally received by you that invoice bore the heading making it out simply to your company?

Ans. Yes, sir.

Mr. Gardner: I offer this.

By the Court: "Defendant's X-5 for Identification."

C. Q. 145. (By Mr. Gardner:) One more invoice, dated July 3, 1914, for coal loaded into barge Rhode Island at Port Reading, New Jersey, made out against Steamship William B. Murray & Owners, and ask you if that, like the others as originally received by you was made out simply to the Atlantic Phosphate & Oil Corporation?

Ans. Yes.

Mr. Gardner: I offer that.

By the Court: "Defendant's X-6 for Identification".

C. Q. 146. (By Mr. Gardner:) This coal covered by these five invoices was loaded by the Piedmont Company?

Ans. I understand so.

C. Q. 147. And was it loaded on board vessels belonging to them or to you, or chartered by them or by you?

47 Ans. Part of it on vessels which they furnished and one or two cargoes, I think, on one of our barges. If you will let me see them I will tell you.

Mr. Woolsey: I object to that as immaterial, and irrelevant.

C. Q. 148. (By Mr. Gardner:) None of it was loaded upon any of the steamers which it is sought to libel in this proceeding?

The same objection.

Ans. None in those five.

C. Q. 149. Do you know where those cargoes were delivered?

Ans. I think they were all delivered at Promised Land. I can tell by referring to the notation on the invoices themselves.

C. Q. 150. If you will kindly look those over, Mr. Meadows, and say whether four were not delivered at Promised Land and one at Tiverton?

Ans. The one of June 20th apparently went to Tiverton.

C. Q. 151. The others went to Promised Land?

Ans. The other four went to Promised Land, two of them in a barge we owned and the other three were barges that the Piedmont & Georges Creek Coal Company owned.

C. Q. 152. Now, when they arrived at Promised Land or at Tiverton, when the coal arrived, what was done with it?

Ans. It was unloaded on the piers.

C. Q. 153. On to your piers?

Ans. Yes.

C. Q. 154. From your piers where did it go?

48 Ans. It went into the steamers and partially into the boiler plants at different places.

C. Q. 155. It was used as a supply for your entire fleet of 19 steamers?

Ans. It was.

C. Q. 156. And it was also used for running your two plants at Promised Land and Tiverton?

Mr. Woolsey: Objected to as irrelevant and immaterial.

Ans. That is right.

C. Q. 157. (By Mr. Gardner:) One of these shipments was made under invoice of June 20th. I will show you this letter and ask whether it was furnished pertaining to the order contained in this letter. I show you a letter signed by yourself, Atlantic Phosphate & Oil Corporation, addressed to the Piedmont & Georges Creek Coal Company, dated June 16, 1914, and ask you if that is a letter sent by

you in response to which the cargo invoiced on June 20, 1914, was furnished?

Ans. That is right.

Mr. Gardner: I will read this. It is very brief.

(Counsel reads letter.)

The letter is offered in evidence and is marked "Defendant's Exhibit 7".

C. Q. 158. (Did you have some correspondence with Mr. Bohannon with reference to the terms upon which this coal was to be furnished in 1914?

Ans. I think there was some letters exchanged, yes.

C. Q. 159. I show you a letter addressed to the Atlantic Phosphate & Oil Corporation, signed by the Piedmont & Georges Creek Coal Company, Mr. Bohannon Manager of Sales, dated May 28, 1914, and ask if that is a letter referring to this matter received by you?

Ans. It is.

Mr. Gardner: I offer this to be marked for identification.

By the Court: "Defendant's X-8 for Identification."

C. Q. 160. (By Mr. Gardner:) I show you a letter dated May 28th—the same date apparently—signed by you in behalf of the Atlantic Phosphate & Oil Corporation and addressed to the Piedmont & Georges Creek Coal Company and ask if that is a letter which you wrote upon this subject?

Ans. That is the reply.

(The letter referred to is marked "Defendant's X-9 for Identification.")

C. Q. 161. Mr. Meadows, I understand you testified that at the time that the Piedmont Company was furnishing this coal in 1914 they held certain notes of your company, the Atlantic Company, some of which were renewals of those made for payment of coal furnished in 1913 and one of which at least was for a single cargo furnished in 1914?

Ans. Yes.

C. Q. 162. That is correct?

Ans. Yes.

C. Q. 163. Now, did your company, about August 24, 1914, give to the Piedmont Company a sight draft on Proctor & Gamble, Cincinnati, for \$2,000 which was subsequently paid?

50 Ans. That is my understanding.

C. Q. 164. And upon what account was that payment made?

Ans. We left that to them. I don't recall that it was specifically directed what account it should apply to. I don't really know what account they did apply it to.

C. Q. 165. The only account that they had against you was the account for the coal which you furnished in 1914, and these notes?

Ans. Which were past due.

C. Q. 166. Which were all the——

Ans. Passed due.

C. Q. 167. They had been renewed—were they not?

Ans. I don't know.

C. Q. 168. You would not testify that they held any influence if they were passed due before that?

Ans. I don't know. I know the original maturity date, whether they accepted the renewals or not, I don't recall.

C. Q. 169. Did you, about August 24, 1914, pay them the sum of \$2,000?

Ans. We did.

C. Q. 170. Sent them a draft for \$2,000?

Ans. Yes.

C. Q. 171. Did you send that by letter?

Ans. I think we handed it to Mr. Bohannon.

C. Q. 172. I show you a letter addressed by Mr. Bohannon to your company, under date of August 24, 1914, and ask if that is a letter acknowledging the receipt of this draft?

Ans. Yes; that is it.

C. Q. 173. And that draft was paid?

Ans. That draft was paid.

Mr. Gardner: I offer this for identification.

By the Court: "Defendant's X-10 for identification."

Mr. Gardner: That is all.

51 Redirect examination by Mr. Woolsey:

Q. 174. Mr. Meadows, by the term "first lien" used in this agreement, Defendant's Exhibit 1 for Identification, you intended a maritime lien, did you?

Mr. Gardner: I object to that.

By the Court: If it is a written document it speaks for itself.

Mr. Woolsey: A first lien can only be a maritime lien.

Mr. Gardner: That is what we will argue on the paper itself.

By the Court: Let me see the paper. It is not really in the case.

Mr. Gardner: We can not put it in until we put in our own case.

By the Court: It seems to me the re-direct on that—it is simply for identification, it is not in the case yet. You can make a re-direct question on the question of identification.

Q. 175. (By Mr. Woolsey:) What was the date of the receivership of the Atlantic Phosphate & Oil Corporation?

Ans. October 19th, I think.

Q. 176. That is when the receivers were appointed?

Ans. 1914.

Mr. Woolsey: I have no objection to Mr. Gardner offering the papers now so that they will be in the case, and if Mr. Meadows is allowed to go, I will be through with him.

Mr. Gardner: I am perfectly willing to stipulate those all in-

52 By the Court: Do you make any objection?

Mr. Woolsey: I can not stipulate them in. I can have

no objection to them at this stage of the case because technically he does not offer them as exhibits until he offers them in his case. I have no objection to his offering them now, no objection based on the fact that it is my case; still we might wait and proceed in an orderly fashion.

By the Court: It is simply a matter of convenience, that is all.

Q. 177. (By Mr. Woolsey:) What was the total amount of coal which you arranged to secure from the Piedmont Company?

Ans. It is contained in one letter there—the May 28th, I believe—where it was finally confirmed, something over 10,000 tons.

Q. 178. And for that you were to give maritime liens on your entire fleet?

Ans. Yes.

Mr. Woolsey: That is all, Mr. Meadows. Now we shall have to recall you a little later.

By the Court: Any further questions?

Mr. Gardner: No, your Honor.

JOHN S. BROPHY is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Brophy, what is your position?

Ans. President of the Piedmont & Georges Creek Coal Company.

53 Q. 2. And of what State is that a corporation?

Ans. State of Maryland.

Q. 3. Was it a corporation in the State of Maryland during the year 1914?

By the Court: Is there any dispute as to the character of the plaintiff?

Mr. Gardner: None at all.

By the Court: The corporate capacity of the plaintiff is conceded—the Piedmont & Georges Creek Coal Company.

Q. 4. (By Mr. Woolsey:) Does this statement show the condition of the account between the Piedmont & Georges Creek Coal Company and the Atlantic Phosphate & Oil Corporation for the year 1913 as it existed in February 1914, with the exception of the last entry?

Ans. That is a statement of the account as it existed after February 9, 1914.

Q. 5. And at that time there was a note for \$3,800 which they had given you?

Ans. Yes. There was a note came due on February 9, 1914, and they reduced that \$200 and gave us a renewal for whatever—\$3,800.

Q. 6. There was a note for \$4,000 due which is reduced to \$3,800 by the payment of \$200?

Ans. Yes.

Q. 7. Then subsequently there was a draft delivered to you on Proctor & Gamble: Is that right—in August 1914?

Ans. Yes, sir.

Q. 8. For \$2,000: That was paid?

Ans. That was paid.

Q. 9. And you credited that to your oldest account: Is
54 that right?

Ans. That is the way we applied it.

Q. 10. So the balance, \$1,800 with interest, is the balance for the year 1913?

Ans. Due on the note.

Mr. Woolsey: I would like to have that marked as our next exhibit.

By the Court: "Plaintiff's Exhibit 4".

Q. 11. (By Mr. Woolsey:) Then, Mr. Brophy, will you look at this statement which tabulates the transactions and state whether that shows the transactions that occurred between your company and the Atlantic Phosphate & Oil Company during the year 1914?

Ans. Yes, sir; that statement includes the whole account.

Q. 12. That includes the whole old—

Ans. Yes, sir.

Q. 13. In respect to this statement, in respect to the account shown on that statement, you are suing here for the last five shipments: Is that right?

Ans. The last five shipments.

Q. 14. Of that year?

Ans. Yes.

Q. 15. Against the several boats mentioned?

Ans. Named.

Q. 16. Now, in February, 1914, do you remember Mr. Bohannon reporting to you on the request of the Piedmont & Georges Creek Coal Company for more coal?

Ans. Yes, sir.

Q. 17. What were your instructions to him? What did you say to their first proposition?

Ans. I told him I would not be interested.

55 Mr. Gardner: One moment. I don't suppose you want to put in any conversation between two of your own officers.

Mr. Woolsey: I wanted to show how Mr. Brophy instructed Mr. Bohannon that they could not go on without having a maritime lien.

Mr. Gardner: It does not seem to me that conversations between two officers of the company is proper.

By the Court: Only for the purpose of showing authority, I suppose.

Mr. Gardner: Authority is not questioned.

By the Court: Authority is not questioned. It is unnecessary.

Mr. Woolsey: May I have that memorandum? I would like to have that marked. I would like to offer this memorandum—Statement of Account showing the transactions for the year 1914, as

our next exhibit, as Mr. Gardner wishes, subject to cross-examination.

Mr. Gardner: I am perfectly willing it should be offered, that the witness should be asked questions about it, but that it goes in as a piece of evidence I think I shall have to object to it on account of the absence of any testimony that it is a transcript of any books or anything else. It is simply a memorandum which is made, as I understand it, by this witness in lieu of testimony. It ought not to go in to prove any substantive facts or any entries upon any books.

Q. 18. (By Mr. Woolsey:) Is it a transcript from your books?

Ans. Yes, sir, exactly.

Q. 19. Is the same true of the other exhibit?

Ans. Yes, sir.

56 By the Court: You claim that is upon your books, can be found thus in its present form?

Ans. As to charges and amounts—they are taken directly from our books.

Mr. Woolsey: My object in offering it, your Honor, is that it is very difficult, I have found, to prepare a complicated case and carry along the several steps—

By the Court: I understand this is merely a compilation from your books and it is not a transcript of any particular page. It is a collocation of items from different parts of the account.

Mr. Gardner: It is a short way of testifying, I suppose.

The Witness: The statements on there, of course, would be statements from the Journal and the amounts would be—the Ledger is not burdened with any statement, so that the amounts are—the statements are from the Journal, the amounts from the Ledger are absolutely correct.

By the Court: It is more convenient to have it in this shape.

Mr. Gardner: It is more convenient. I think I can cross-examine on it.

By the Court: It is presented as a transcript in the way stated by witness.

Mr. Gardner: Not, as I understand it, a transcript.

By the Court: It is a collocation of items which are a transcript of items—

Mr. Gardner: Of some parts of their journal and ledger.

Mr. Woolsey: It is a summary of accounts, for convenience of Court and counsel.

57 Q. 20. Does that account, Libellants' Exhibit 5, correctly state the balance due?

Ans. Yes, sir.

Q. 21. There are included in that account all the transactions in 1914?

Ans. I don't know whether that covers all the transactions. I didn't look at it to that extent.

Q. 22. All unpaid transactions?

Ans. Yes; all unpaid. That is the same statement that an expert bookkeeper would take from our books if he were to go there and examine them. There would not be a cent difference.

Mr. Woolsey: Will it be necessary to go into the question of the amounts on each libel, or can't we stipulate that the agreed reasonable value of the coal furnished on the several dates mentioned in the libels were the amounts therein stated?

Mr. Gardner: We could agree as to that coal furnished under those different shipments on those different dates, that it was of the value you have claimed.

Mr. Woolsey: And that they are still unpaid?

The Witness: Yes.

Mr. Gardner: We claim this \$2,000 has got to be credited on those accounts.

Mr. Woolsey: Will you put in a stipulation this way: It is stipulated and agreed by and between counsel that coal was furnished of the value stated in the libel?

Mr. Gardner: We agree to that.

Mr. Woolsey: And that it has not been paid for?

Mr. Gardner: We can't say that it has not been paid for.
58 Mr. Woolsey: Then I think I had better take it up in each case.

By the Court: Do you claim simply a single credit?

Mr. Gardner: A single credit except as we claim that \$2,000 should be credited on this account.

By the Court: Is there any question of the application of the \$2,000?

Mr. Woolsey: That is the only question, sir, and I think we might stipulate that the amounts claimed in the libels are the agreed and reasonable value of the coal furnished as stated in the libels, and that they have not been paid, with the exception of the disputed credit of \$2,000 on the Proctor & Gamble draft, and as to that, that is in dispute as to the application of that payment.

Mr. Gardner: We are perfectly willing to stipulate, as I understand it, that the amount of coal contained in those five shipments for which a lien is sought was furnished, that the prices charged for it were fair and reasonable prices.

Mr. Woolsey: And agreed to?

Mr. Gardner: And agreed to, and that it has not been paid for except as the payment of this Proctor & Gamble draft would constitute a payment in part.

By the Court: I understand that you say "furnished". It is not intended that it was furnished to a particular vessel?

Mr. Gardner: It was furnished only to the Atlantic Phosphate & Oil Corporation.

By the Court: I understand it is not intended or admitted it was furnished to these special vessels.

Mr. Gardner: No, your Honor.

By the Court: That it was furnished as an allocation, under the language of the third paragraph of the libel.

59 Mr. Gardner: My suggestion would be that we might

stipulate that this coal was furnished at the plants of the Atlantic Phosphate & Oil Corporation in Promised Land and at Tiverton.

Mr. Woolsey: I suggest we merely agree that the amounts claimed in the libel is the reasonably agreed value of the coal shipped on the several barges mentioned in the libels, then I can go on and prove that it has not been paid.

By the Court: I do not know about the shipments on the barges.

Mr. Woolsey: Yes, sir; you will see on the third page of each libel coal forwarded on Boat Harry Husted; coal furnished by Crystal—

Mr. Gardner: Why don't you let your witness testify to it, if he can?

Mr. Woolsey: All right.

Q. 23. Mr. Brophy, is this a memorandum that you made in regard to the boats?

Ans. Yes, sir.

Q. 24. Will you refresh your recollection by looking at that, if it is necessary, and tell me whether you shipped by the boat Harry Husted, from Port Reading, New Jersey, 911 tons, at an agreed price of \$3.30 per ton, and tell on what date you shipped them?

Ans. Some time between May 19th and 29th, the boat was loaded on May 19th.

Q. 25. That was delivered to Promised Land, was it?

Ans. Promised Land.

Q. 26. Charged against boat Herbert N. Edwards?

60 Ans. Yes.

Q. 27. What is the total amount?

By the Court: At what time charged against Herbert N. Edwards?

Mr. Woolsey: We libel Herbert N. Edwards for that.

By the Court: The difficulty is when there was a delivery to a particular vessel that is, I understand an allocation for a lien of a particular amount on a particular vessel.

Mr. Woolsey: We can show that some of the coal actually did reach these vessels. So far as the testimony has now gone there was, there was a general agreement on the whole fleet and a particular allocation of this shipment against this particular boat.

Q. 28. What was that amount, that first of the five shipments?

Ans. That was the Harry Husted?

Q. 29. Yes.

Ans. 911 tons—\$3.30; was delivered at Promised Land \$3006.30.

Q. 30. That is charged against Steamer, Herbert N. Edwards?

Ans. Yes.

Q. 31. You are suing here in respect to that amount?

Ans. Yes, sir.

Q. 32. Has that amount been paid?

Ans. No, sir.

Mr. Gardner: Does the witness understand when he says that is charged? Your honor, those words would refer to the original entry. He does not mean, I think, to say that by the original entry that was charged to ship Herbert N. Edwards.

The Witness: That account is charged on our books now against that boat.

By the Court: It is not charged, in the ordinary course of business, on the delivery of the goods, it is charged—it is a charge subsequently made in pursuance of an agreement as to a particular matter not directly connected with the ordinary delivery of the goods. That ought to be clearly established.

Mr. Woolsey: That is on record now.

By the Court: These are not entries made in the ordinary course of business but are entries made in accordance with a particular arrangement made by the parties?

Mr. Woolsey: Yes.

By the Court: The charges on each one of those vessels are not in the ordinary course of business, but in an extraordinary course of business and by particular arrangement.

The Witness: Under their agreement Mr. Meadows was to set the date of payment. He was to pay these first bills out of moneys advanced and he set that date of payment. Even under his agreement he was to give us the names of the boats on which we were to get a maritime lien.

(By Mr. Woolsey:)

Q. 33. In respect to the second shipment, by what boat was that?

Ans. It is charged to the boat Rollin E. Mason.

Q. 34. That was sent by what boat, shipped by what boat?

Ans. Crystal.

62 Q. 35. How many tons?

Ans. 922 at \$3.65, delivered at Promised Land.

Q. What was the date?

Ans. The date was May 23d.

Q. 37. The amount.

Ans. \$3365.30.

Q. 38. In respect to that amount you are suing the Rollin E. Mason?

Ans. Rollin E. Mason.

Q. 39. And has that amount been paid?

Ans. No, sir.

Q. 40. Now, when was the next shipment?

Ans. On June 9th.

Q. 41. By what boat?

Ans. Rhode Island; 1187 tons.

Q. 42. What rate per ton?

Ans. \$3.10.

Q. 43. Any trimming charges, or docking charges?

Ans. \$44.60 docking and trimming charges.

Q. 44. When was that shipped?

Ans. June 9th.

Q. 45. What was the amount?

Ans. \$3679.70 plus \$44.61 trimming charges.

Q. 46. Making a total of—

Ans. I have not got the total—yes; making a total of—no, I have not got the total.

Q. 47. \$3724.31—would that be right?

By the Court: You need not stop to add it.

(By Mr. Woolsey:)

Q. 48. Has that amount been paid?

Ans. No.

Q. 49. The next shipment, the fourth shipment, was made—never mind about adding it up, sir—the next shipment was made by what boat?

63 Ans. H. Walker, June 20th.

Q. 50. How many tons?

Ans. 861 tons.

Q. 51. At what rate.

Ans. \$3.75.

Q. 52. Amounting to what?

Ans. \$3228.75.

Q. 53. That is charged against what ship?

Ans. The Amagansett.

Q. 54. You are suing the Amagansett here in respect to that claim?

Ans. Yes.

Q. 55. And the next one?

Ans. July 3d, Rhode Island, 1439 tons, \$3.10; \$65.17 trimming charges.

Q. 56. Making a total of \$4526.07?

Ans. Yes; charged to boat William B. Murray.

Q. 57. You are suing Steamer William B. Murray here?

Ans. Yes.

Q. 58. Has any part of the sums in respect to these—in respect to which you are bringing these five libels been paid?

Ans. No, sir.

Q. 59. They are still unpaid with interest?

Ans. Yes, sir.

Q. 60. That amounts in all to \$17850.73, does it not?

Ans. Yes, sir; I think that is correct.

Q. 61. With interest added?

Ans. With interest.

Q. 62. That is, interest is to be added from the dates of the several deliveries?

Ans. Yes, sir.

(A brief recess is taken here.)

64 Q. 63. At the beginning of 1914 in February did you know the condition of the Atlantic Phosphate & Oil Corporation?

Ans. Financially, I guess they owed us \$4,000 and we were unable to get it after considerable efforts.

Q. 64. With your knowledge as to their condition would you have extended any further credit to them if it hadn't been, if they hadn't

agreed, through Mr. Meadows, to give you maritime liens for such coal as you did give?

Mr. Gardner: Objected to.

By the Court: I think the question is objectionable.

(By Mr. Woolsey:)

Q. 65. On what grounds did you give them any further credit?

Mr. Gardner: It is objected to. It is a question of fact.

By the Court: What was the agreement?

Mr. Woolsey: The agreement, the understanding.

Mr. Gardner: The witness should testify as to his own knowledge.

Mr. Woolsey: He is president of the company who authorized the agreement.

Mr. Gardner: Precisely, but the agreement was made with some one else.

The Witness: I had issued orders, not to issue any credit.

(By Mr. Woolsey:)

Q. 66. Had you issued orders not to issue any credit?

Objected to.

65 Ans. I did.

Q. 67. To the Atlantic Phosphate & Oil Corporation?

Objected to.

By the Court: I think that is a material fact.

The Witness: I had issued orders not to extend any deeper credit to the Atlantic Phosphate & Oil Corporation.

Q. 68. Why did you change those orders subsequently?

Ans. On the assurance of Mr. Bohannon that the arrangement with Mr. Meadows——

Mr. Gardner: Wait one moment. I don't think what Mr. Bohannon told is proper. It is all in evidence. It is not necessary to try to get it in twice by one who does not know anything about it.

(By Mr. Woolsey:)

Q. 69. Would you have furnished any to this company——

Mr. Gardner: Objected to.

(By Mr. Woolsey:)

Q. 70. —without having an agreement from them to give maritime liens on their fleet?

Mr. Gardner: Objected to.

By the Court. That has already been ruled out.

(By Mr. Woolsey:)

Q. 71. What agreement did you finally come to with the concern in order to lead you to give them further credit?

Mr. Gardner: If the witness will testify of his own knowledge.

66 Ans. I agreed to extend them credit provided their account was absolutely secured by maritime liens.

Cross-examination by Mr. Gardner:

C. Q. 72. To whom did you give that instruction, Mr. Brophy?

Ans. I instructed our agent Mr. Bohannon.

C. Q. 73. All you know about this matter at all, whether any agreement was made, is from statements which were made to you by Mr. Bohannon?

Ans. That is correct.

Mr. Gardner: If I were trying this case before a jury I would ask to have this testimony stricken out but I suppose it is all right as it is now.

C. Q. 74. Now, with reference to this \$2,000 draft of Proctor & Gamble, that was paid, was it?

Ans. Yes.

C. Q. 75. You say you credited that on your oldest account?

Ans. That is the way it was credited.

C. Q. 76. What was that oldest account?

Ans. That was a note for \$3,800.

C. Q. 77. That note, at the time the Proctor & Gamble draft came to you and at the time it was collected, was not due, was it?

Ans. No, sir.

C. Q. 78. And that note was subsequently renewed for the full amount?

Ans. Yes, sir.

67 C. Q. 79. And you had no other outstanding account against the Atlantic Phosphate & Oil Corporation except the account for these shipments for which you now seek a lien, no account other than notes?

Mr. Woolsey: I object to that. He has already stated he did.

The Witness: There might have been some interest account; I am not sure about that.

(By Mr. Gardner:)

C. Q. 80. That would be all?

Ans. That would be all.

C. Q. 81. You have testified, Mr. Brophy, with reference to a statement or compilation of indebtedness from the Atlantic Phosphate & Oil Corporation to your company which has been marked Exhibit 5: In the last column of that statement there are entries which apparently are intended to show how the different items were settled. The first item was settled by note?

Ans. By note.

C. Q. 82. The second by note?

Ans. By note.

C. Q. 83. The third by cash?

Ans. That is so.

C. Q. 84. The fourth by cash?

Ans. That is right.

C. Q. 85. And the fifth, which is dated May 19th, 1914, has against it the entry "Charged to boat Herbert N. Edwards": That charge was not made, was it, at the time the merchandise was furnished?

Ans. No, sir; not until it was labelled the name of the boat.

C. Q. 86. And none of these charges to any of these boats which are contained in the last column of this statement were made when the coal was originally delivered?

Ans. No, sir.

68 C. Q. 87. When the coal was originally delivered the coal covered all these five last shipments for which you are now claiming, it was all charged simply to the Atlantic Phosphate & Oil Corporation?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

Ans. Yes, sir.

(By Mr. Gardner:)

C. Q. 88. You answered yes?

Ans. Yes.

C. Q. 89. Where did you get these items charged to the different boats from, what one of your books did you take them?

Ans. We did—we originally got the names from him.

C. Q. 90. When you made that, or before you made up these five, what books did you go to, or what account, to get these items?

Ans. Well, we would go to our journal and ledger to get the account.

C. Q. 91. Not the account, the items contained in the last column?

Ans. We were supplied with the names of the boats, we made cross-entries on our journal crediting the Atlantic Phosphate & Oil Corporation according to the agreement and charging the boats.

C. Q. 92. Then those items were taken from entries upon your journal?

Ans. Yes, sir, and ledger.

C. Q. 93. Made after all this coal had been delivered, and after it had been originally charged simply to the Atlantic Phosphate & Oil Corporation?

Same objection.

69 Ans. Yes.

C. Q. 94. With reference to this \$2,000 draft—was that originally credited upon any special note?

Ans. No, sir; I think not.

C. Q. 95. I show you a claim which you made as liener, or a claim made by the Piedmont & Georges Creek Coal Company as liener, and signed by yourself as president of that company—or, rather, I show you a paper purporting to be signed, and ask you if that is what it purports to be?

Ans. What is your question?

C. Q. 96. That is a statement of claim made by you in behalf of your company to the Atlantic Phosphate & Oil Corporation?

Ans. Yes.

Mr. Woolsey: It is not a lien claim.

Mr. Gardner: Oh, no; it is a statement of this company against the Atlantic Company.

Mr. Woolsey: In respect to certain collateral.

Mr. Gardner: In respect to what was filed with them as a claim.

Mr. Woolsey: A claim against certain collateral. It speaks for itself.

Mr. Gardner: Very well, I simply identify it.

C. Q. 97. Now, I ask you whether you did not, in this claim, include the three notes being all that you had and aggregating, as you state in this claim, the sum of \$8,853.32 and did not further state that of that amount the sum of \$6,853.32 remains unpaid, and I ask you if the difference between the amount for which you claim and the amount which you state remains unpaid is not represented by that Proctor & Gamble note?

Ans. It was represented by that.

70 C. Q. 98. And there was nothing upon your books which showed the appropriation of that sum, of the amount of that draft—any special note?

Ans. At that time?

C. Q. 99. At that time.

Ans. I don't know what the date of that is.

C. Q. 100. This is dated January 4, 1915.

Ans. At that date—at the date of that, why it was then charged in this.

C. Q. 101. Against the three notes?

Ans. Against one note.

C. Q. 102. On what note was it charged against them?

Ans. Against the \$3,800, first note.

C. Q. 103. When was it first charged against the \$3,800 note?

Ans. When we were advised that we could apply—when it was within our discretion to apply it against the oldest account.

C. Q. 104. When was that, about the time you made out this statement?

Ans. No. It was before that, if that is dated January.

C. Q. 105. And for the first time you made application against that note?

Ans. Yes.

C. Q. 106. You didn't hold that a special note at the time that

application was made, did you, you held another note of which that was a renewal?

Ans. Yes.

Mr. Gardner: I offer this and ask to have it marked for identification—"Defendant's X-11".

That is all.

71 Redirect examination by Mr. Woolsey:

Q. 107. Now, Mr. Brophy, this paper which Mr. Gardner has just been showing to you, that was merely a notice, was it not, with regard to foreclosure of certain collateral which you held?

Ans. Yes.

Q. 108. Now do you remember when it was that you charged this \$2,000 received from the Proctor & Gamble note against the balance due from the season of 1913 as shown by Plaintiff's Exhibit 4?

Ans. The exact date it was charged, do you mean against that?

Q. 109. Yes; when it was charged against that.

Ans. Well, we received the draft for \$2,000 in August—the 25th—apparently, I think the note was renewed in September, and it was not until it passed into the hands of the receivers that we were instructed that we could apply—

Mr. Gardner: Instructed by your counsel.

The Witness: Yes, sir—that we could apply that to the oldest account. We applied it generally on the books, when we first received it it would be cash to the whole account.

(By Mr. Woolsey:)

Q. 110. To the whole account?

Ans. To the whole account.

Mr. Woolsey: I think that is all.

Mr. Gardner: That is all.

72 CHARLES R. HORTON is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Horton, what is your business?

Ans. I work for the Atlantic Phosphate & Oil Corporation at Promised Land. My duties are general.

Q. 2. Did you work for them during 1914?

Ans. I did.

Q. 3. Are you working down there now for a similar concern?

Ans. I am.

Q. 4. Have you brought with you to court to-day any records showing the cargoes of coal received at Promised Land from the Piedmont & Georges Creek Coal Company, and the use made of that coal?

Ans. I have.

Q. 5. Can you produce them?

Ans. Yes.

Q. 6. Will you do so?

(Certain papers are produced by the witness.)

Q. 7. Are those correct copies of your original records, or are they the original records?

Ans. I have the original records and copies I have made of them for distribution.

Q. 8. Will you state when the coal forwarded by the boat Harry Husted, from Port Reading, in May, was received at Promised Land, and how the 911 tons were used?

Mr. Gardner: I object. I think it makes no difference how this 911 tons were used. They were to be furnished, as the testimony produced in behalf of the libellants shows it was furnished, simply to the company. It was only for supplies furnished to a vessel that a lien attaches, and that if it was delivered simply to the company, as the testimony here shows it was originally delivered to the company, it makes no difference where it subsequently goes even though some of it went into the vessel which is sought to be libelled.

Mr. Woolsey: There are two counts on our libel—the first is for a lien under a contract, and the second is for a maritime lien by way of furnishing coal. I desire to show——

By the Court: You can show, if you can, what coal was received by any vessel involved in these libels.

Mr. Gardner: Simply that we reserve our rights, I will take an exception to testimony of that character.

By the Court: Very well.

(The question is read.)

Mr. Gardner: Just one moment, if we are going to do this, would it not be better to identify this as coal now sought to be charged against some steamer in the case? There are five different libels. They are tried together but they are each a separate proceeding. The claim is that a certain amount of coal not 911 tons was furnished to the Edwards.

By the Court: We do not care what was done with any other coal except so far as it relates to these libels.

Mr. Gardner: Precisely.

Mr. Woolsey: May I move to consolidate the libels? Your Honor has power to do that and not only try them together but try them as one case?

By the Court: We are trying them practically together. I do not know what question might arise were we to consolidate them. These are all intervening libels?

Mr. Woolsey: They are.

By the Court: Is it at all material for your case to show the disposition of any coal except what went into one of these vessels?

Mr. Woolsey: I will have to know what was done with the coal in order to know whether it went into those vessels or some other vessels on which we did have liens by the agreement, but which we

are not actually suing here. If there is a substitute by one lien for another——

By the Court: Can you swap liens?

Mr. Gardner: You are not asking for liens on our fourteen other vessels?

Mr. Woolsey: No. We had liens on your other fourteen vessels owing to Mr. Brophy's good nature they were not enforced. If they actually got the coal there is no question whatsoever we have a right to apply them here.

Mr. Gardner: You are now proposing to show not only what coal went to the vessel against which a lien is sought but what coal went on all our vessels against which no lien is asked at all.

By the Court: That must be on the theory that the parties to the contract had a right to swap liens.

Mr. Healy: It is on the theory that all these vessels are treated as one vessel in this arrangement. We might have attacked only one vessel for all this coal. This whole fleet is taken as one vessel and we see fit to attack five.

Mr. Gardner: If you agree to take five, take them now.

75 Mr. Healy: It is five for the whole bill, your Honor.

By the Court: That is the plaintiff's theory, that it is a unit.

Mr. Healy: Exactly.

By the Court: I have known of a tug and tow being sued as a unit.

Mr. Woolsey: I ask you to allow it to go in. It can not possible prejudice them.

By the Court: My present impression is you can not attach it except on the actual receipt of the coal by the vessel and to swap on agreement of this sort does not confer a lien. Of course, it would be a very serious question, if they allow this, against other lienors who might file other liens on other vessels.

Mr. Woolsey: I think the authorities show pretty clearly that the owner of a vessel can do what he will with his own. It is not a question of implication arising from the Lien law.

By the Court: It is a question of other lienors and other creditors. I will let you put the evidence in for what it may be worth.

(The question is read.)

Ans. They were received on May 29th, 106 tons for use at the factory; 805 tons for the steamers. Now, I understood——

By the Court: What steamers?

Ans. I understood that I was to furnish the whole four cargoes given at the Promised Land at a lump, and I have furnished the four cargoes.

76 By the Court: Not what you did, but where the coal went, as a matter of fact.

Ans. I couldn't tell you just now.

(By Mr. Woolsey:)

Q. 10. Have you any data with you showing what coal was furnished from Promised Land to the Steamers Herbert N. Edwards,

Rollin E. Mason, Martin J. Marran, Amagansett, and William B. Murray from the coal sold by the Piedmont & Georges Creek Coal Company?

Ans. I have.

Q. 11. Can you give those amounts?

Mr. Gardner: I object: in the first place it covers the whole four shipments for which a lien is sought upon four different steamers.

By the Court: Are you not going to individualize this or is it another lump?

Mr. Woolsey: I have not seen this witness before. Mr. Collette agreed to have him produced here instead of my having to subpoena him from Long Island. I am asking him as a more or less hostile witness to tell what proportion each boat got.

By the Court: Find out what account he has got.

(By Mr. Woolsey:)

Q. 12. What sort of accounts did you keep of those things and the coal you furnished—how did you keep the accounts?

Ans. I kept an account as it went out and made a monthly report of what each boat took.

Q. 13. Was all the coal you had there from the Piedmont & Georges Creek Coal Company except what you stated was used at the factory, furnished to all these boats?

Ans. All the steamers, yes, sir.

77 Q. 14. How much was furnished from the coal you received from the Piedmont & Georges Creek Coal Company during the season of 1914, at Promised Land, to the Steamship Herbert N. Edwards?

By the Court: When you say "all these boats" what do you mean?

Mr. Woolsey: I mean these five boats we are discussing.

By the Court: Were these the only boats taking coal at Promised Land?

Mr. Woolsey: I don't know, sir. I will change my question and simply ask him how much coal from the coal furnished by the Piedmont & Georges Creek Coal Company, during the season of 1914, at Promised Land, was loaded on board Steamship Herbert N. Edwards, for its use.

Mr. Gardner: It is in testimony here that in 1914 one cargo was furnished and notes were taken for it secured by bonds; another cargo was furnished and notes were taken for it, and those notes were paid; and another cargo was furnished in 1914 for which cash was paid; and another cargo was furnished and a fourth cargo for which cash was paid. Now this witness is asked to state, and can only state in the very nature of things, what coal was taken from the pile at Promised Land, and that question covers not only the coal for which they are seeking a lien in this case but four cargoes of coal furnished before during the year 1914.

Mr. Woolsey: Perhaps I had better limit my question to begin the 29th of May when the boat Harry Husted arrived at Promised Land.

78 Q. 15. Can you state how much coal was furnished to each of those five vessels?

Mr. Gardner: That is equally objectionable as to whether all these four cargoes were there.

Mr. Healy: They were used up then.

Mr. Woolsey: Your Honor, we supplied the coal——

By the Court: Unless you took an account of stock at that time I do not see that your figures would help much.

Mr. Woolsey: The answer to that, I think, is we had a lien under agreement on all their boats for coal furnished and all coal sent there in 1914 having been furnished under that agreement, that took itself right along by way of lien, and for any coal we had there on the Herbert N. Edwards I am entitled to know how much that was.

Mr. Gardner: You are only asking for a lien for this coal, you are not asking for a lien on cargoes for which you received the money, and only a week before one of the cargoes paid for was delivered there, according to your testimony.

By the Court: You must exclude anything for which you have been paid.

(By Mr. Woolsey:)

Q. 16. Have you any records showing how much coal was furnished to the Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and the William B. Murray, for their respective uses, subsequent to the arrival of barge Harry Husted at Promised Land?

Mr. Gardner: I object.

The Witness: I have.

79 By the Court: He says he has.

(By Mr. Woolsey:)

Q. 17. How much do they average?

By the Court: Here is paid for coal on the dock, in a heap, and lien coal, if we may call it so. Now any furnished from the paid for coal is of no consequence.

(By Mr. Woolsey:)

Q. 18. How much coal did you have on hand when the Husted arrived there, can you tell about that?

Ans. We had approximately 1068 tons received from the barge Crystal on the 19th of May.

Q. 19. Then was the other coal on the Harry Husted put in a separate compartment, or on top of that coal?

Ans. It was put with that coal.

Q. 20. Which was used first when you started to use the coal after the arrival of the Husted? Was the Husted coal used first, or the other coal?

Mr. Gardner: How is it possible to tell.

Mr. Woolsey: I don't know whether it is possible; sometimes things are kept separate.

Mr. Gardner: He says they are put in the same pile.

Mr. Woolsey: Your Honor, I think we are entitled to show that our coal was put in, and we were sending coal there continually, but as Mr. Healy calls my attention to it, we have got no longer a lien covering the whole thing, because they have paid for some cargoes but they have not paid for the first two, and they have not paid the last five.

80 Mr. Gardner: You haven't filed any lien for those.

Mr. Woolsey: We have got no longer a lien for those, for everything, but we are entitled to show what part was used subsequently to the arrival of the first boat, and we are suing for what went to each of the five steamers involved in these libels.

By the Court: Well, it simply illustrates the difficulty, on your theory of—

Mr. Woolsey: It might possibly be, sir, that a Commissioner will have to take evidence as to the details of damage hereafter, but I think we are entitled to know here how much this witness said he furnished, subsequent to the arrival of the Harry Husted, to the Edwards and these other boats because however you look at it, if some coal was there and we furnished more coal. It does not make any difference whether we substitute new coal in place of the old coal or not. Our coal was used on board the Edwards and on board the Mason, and whether it was exactly the same piece of coal or not, it was coal we were steadily supplying to them in a series of boats and was for their use on their boats. I think we are entitled to show exactly what amount was used by each of them.

By the Court: I do not know what it will come to when it is in. Make it as short as possible.

Mr. Gardner: Exception, your Honor.

(By Mr. Woolsey:)

Q. 21. What have you got there?

Ans. Herbert N. Edwards, 424 tons.

Q. 22. Have you got the dates?

Ans. No, sir.

Q. 23. How much the Rollin E. Mason?

Ans. 299 tons.

Q. 24. And the Martin J. Marran?

81 Ans. 251 tons.

Q. 25. And the Amagansett?

Ans. 492 tons.

Q. 26. William B. Murray?

Ans. 288 tons.

Q. 27. All that coal was furnished to these vessels after the arrival of the Harry Husted, at Promised Land, and was discharged on May 29, 1914?

Ans. It was.

Q. 28. Is that right?

Ans. Yes, sir.

Q. 29. Was there any coal furnished you by the Piedmont & Georges Creek Coal Company after the arrival of the Harry Husted in May 29, 1914, to other vessels of your fleet than the five vessels named in these libels?

Ans. There was.

Q. 30. How much was furnished?

Mr. Gardner: Objected to.

By the Court: Under the same understanding it may be answered.

Ans. Do you want me to give it by boats.

(By Mr. Woolsey:)

Q. 31. If you will.

By the Court: Is that necessary?

Ans. The Walter Adams——

By the Court: I do not think the detail is necessary.

(By Mr. Woolsey:)

Q. 32. Then give the total furnished the boats other than these five.

82 By the Court: Furnished the boats of the 17 other than these five?

Mr. Woolsey: Other than these five, yes, sir.

Ans. 1814 tons.

Q. 33. That is, 1814 tons was furnished at Promised Land for coaling purposes, steaming purposes, to other boats of this fleet than the five mentioned in this libel. Is that right?

Ans. That is right.

Q. 34. And all this coal that you testify to was the Piedmont & Georges Creek Coal Company coal which went to the use of your fleet?

Ans. It was.

Mr. Gardner: Do you mean it all went to the use of the fleet?

Mr. Woolsey: I said all he testified to, that he testified went to the use of the fleet, he said some was used in the factory.

Q. 35. All the coal that you have referred to in your testimony was coal which was used by your fleet, including the five vessels under libel, subsequent to May 29, 1914, when the Harry Husted arrived?

Ans. It was.

Mr. Woolsey: That is all.

Mr. Gardner: That is all.

CHARLES E. MILLIGAN is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. What is your position, Mr. Milligan?

Ans. Position at the present?

83 Q. 2. Yes.

Ans. Manager of the Seaboard Fisheries Company.

Q. 3. What was your position in 1914?

Ans. I was at Tiverton running the plant.

Q. 4. For what?

Ans. The Atlantic Phosphate & Oil Corporation, subject to Mr. Meadows.

Q. 5. Were you in position to know anything about the use of coal which was delivered to you from time to time at Tiverton?

Ans. I was, yes.

Q. 6. Well, was there a shipment of coal received by you at Tiverton from the Piedmont & Georges Creek Coal Company for use—when did it come?

Ans. June 20, 1914.

Q. 7. Did you keep any record to the total amount that was on board that barge?

Ans. Yes; 861 tons.

Q. 8. Did you keep any record showing what was furnished from the coal received from that barge to the Steamships Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray?

Ans. I kept a record of the distribution of the entire cargo of those five boats included.

Q. 9. Have you that record showing how much each of those boats received?

Ans. No; I haven't it with me. I was summoned here on short notice. I was on Long Island. I had that record in the Tiverton office.

Q. 10. I thought you were going to bring that along.

Ans. Mr. Cox probably has the record. I made a record for Mr. Cox and he received it.

Q. 11. Is that (indicates) the record which you made?

Ans. Yes.

84 Q. 12. Can you state how much of that cargo of the boat H. Walker was delivered to the Steamship Herbert N. Edwards for use in steaming?

Mr. Gardner: Is that question a question as to the amount of coal from this cargo or the amount of all the coal that was delivered from Tiverton after this cargo arrived?

Mr. Woolsey: From this cargo.

Ans. When this cargo arrived, if I correctly remember, we had but very little coal that was in the boiler room and not in the coal bin.

Q. 13. So you have this coal separate?

Ans. We have this coal separate.

Q. 14. How much was furnished to the Herbert N. Edwards?

Mr. Gardner: This is objected to, and exception.

By the Court: The same ruling.

(By Mr. Woolsey:)

Q. 15. Out of this cargo from the H. Walker?

Ans. I kept this in monthly accounts, what each boat got. I kept the account of coal in monthly accounts. The Edwards got coal in July, which was charged in the month of July.

Q. 16. Does this summary correctly state it?

Ans. I will have to check it off—the Edwards, you want?

Q. 17. I want the amount furnished to each one from that cargo. You can take it July, and then August, whichever way is easiest to you.

By the Court: I think that had better be prepared during the noon recess. I think we will stop here now.

85 Mr. Woolsey: Can we not put this whole record in?

The Witness: That record is correct.

Mr. Gardner: If you want to take the figures we pick out from that record we will give them to you.

(By Mr. Woolsey:)

Q. 18. Is this record correct?

Ans. That record is correct.

Mr. Woolsey: I will put this record in.

Q. 19. Does that show how much each of those boats got?

Ans. That shows what each of the boats got and what was used at the plants of that cargo.

Q. 20. And also what all the boats got, not only these five boats in question but all the boats?

Ans. (No answer.)

Mr. Woolsey: I will put that in evidence as our exhibit.

By the Court: "Plaintiff's Exhibit 6".

Mr. Gardner: That is subject to our general objection.

By the Court: You object to it on the ground that it is not properly made up?

Mr. Gardner: No, we are willing it should go in subject to our general objection to that line of testimony.

By the Court: What is your objection—as to this specific record?

Mr. Gardner: Not at all; we should take any reply made by the witness based upon that record.

By the Court: That is Plaintiff's Exhibit 6.

Mr. Woolsey: That is all.

86 Cross-examination by Mr. Gardner:

C. Q. 21. Was any more coal received at Tiverton during the summer of 1914—during the year 1914, after this cargo was received?

Ans. No.

Mr. Gardner: That is all.

Libellants rest.

Evidence for Claimant.

Mr. Gardner: I offer these various documents that have been marked for identification. Have you any objection?

By the Court: Defendant offers 11 Exhibits previously marked for identification.

Mr. Woolsey: Yes, sir; and I object. We will object to all of the exhibits offered with the exception of Nos. 2, 3, 4, 5 and 6, as immaterial, irrelevant and incompetent in view of the contract between the parties.

By the Court: Now, is there any special ground for objection? If there is it should be pointed out to the Court at this time for I do not make any blanket ruling.

Mr. Woolsey: My point is that with regard to all of these other documents, shown—the bills as amended—that there is no relevancy at all in view of the agreement for a maritime lien made by

87 Mr. Meadows with Mr. Brophy and Mr. Bohannon, that all these other documents—I don't know what purpose they are offered for, they merely go to the amount of coal which should be furnished, or something of that kind, and they really are not material on the main question of lien. That is the point I make about it.

By the Court: The matter in my mind specifically to rule upon a whole lot of documents I have not seen. I do not know what they are except, of course, in a general way.

Mr. Woolsey: I presume in a trial in admiralty where it is considered to be a new trial, in the Circuit Court of Appeals, the practice would be to allow the objector to register his objection and the documents go in subject to the objection so that the whole record could be before the Court.

By the Court: I do not admit things I do not know about. Here we have a lot of exhibits marked for identification. They are offered and objected to. State your grounds for offering them and their relevancy to the case.

Mr. Gardner: Your Honor suggests that I state why these should be admitted in evidence?

By the Court: Perhaps if you will tell me what they are.

Mr. Gardner: Exhibit 1 is a paper purporting to be a contract between the libellants and the Atlantic Phosphate & Oil Corporation, dated February 13, 1914, and was referred to by witnesses by the libellants as having been executed at and it has to do with the

first shipment of this coal. I offer it in evidence as "Exhibit No. 1."

Mr. Woolsey: We don't object to that.

By the Court: Objection to Defendant's Exhibit No. 1 for Identification is waived, and it is admitted.

88 Mr. Woolsey: I don't object to the first six of them.

Mr. Gardner: 2, 3, 4, 5, 6 are invoices with orders.

By the Court: 2, 3, 4, 5, and 6 are not objected to.

Mr. Gardner: That each include four papers put together.

Exhibit No. 7 is a letter from Mr. Meadows representing the Atlantic Phosphate & Oil Corporation to libellants ordering or authorizing them to supply a cargo of about 700 tons of coal to the Tiverton plant and it seems to us to have an important bearing upon the conditions under which that actually was delivered.

By the Court: Admitted.

Mr. Woolsey: I object to that one as immaterial, irrelevant and incompetent.

By the Court: Very well.

Mr. Gardner: Exhibit No. 8 is a communication from the Piedmont & Georges Creek Coal Company to the Atlantic Phosphate & Oil Corporation, dated May 28, 1914, confirming the agreement for the furnishing of coal which is therein referred to and which we think has a most important bearing.

By the Court: The same ruling.

Mr. Woolsey: I object to that.

By the Court: The same ruling.

Mr. Gardner: Exhibit No. 9 is a letter from the Atlantic Phosphate & Oil Corporation signed by Mr. Meadows, addressed to the Piedmont & Georges Creek Coal Company, by Mr. Bohannon confirming a certain agreement relative "to our requirements for coal at Promised Land and Tiverton for the coming season", etc.

By the Court: Admitted.

Mr. Woolsey: The same objection.

89 By the Court: The same ruling.

Mr. Gardner: No. 10 is a letter from the Piedmont & Georges Creek Coal Company to the Atlantic Phosphate & Oil Corporation acknowledging the receipt of this sight draft on Proctor & Gamble and which we think has a bearing upon the question as to whether the amount of this draft should have been credited upon its open account which is covered by these libels, or should have been credited upon the note.

By the Court: Admitted.

Mr. Woolsey: The same objection.

By the Court: The same ruling.

Mr. Gardner: Document No 11 is a claim made by the Piedmont & Georges Creek Coal Company—

By the Court: I remember that—admitted.

Mr. Wolsey: The same objection.

Mr. Gardner: Now, I think we have no testimony to offer beyond that.

Evidence for Libellant in Rebuttal.

THOMAS C. MEADOWS is recalled in rebuttal and further testifies,
as follows:

Direct examination by Mr. Woolsey:

Q. 1. Now, Mr. Meadows, why was it that the Atlantic Phosphate & Oil Corporation didn't go into a receivership in 1913?

Mr. Gardner: Objected to.

90 Ans. Primarily, I presume, because no creditors——

Mr. Gardner: Wait one minute. I object to that. The only question is whether they knew about their perilous condition. He said they did.

By the Court: This is opening up a pretty broad field.

(By Mr. Woolsey:)

Q. 2. Did you carry the company along yourself?

Ans. I undertook to——

Mr. Gardner: I object.

By the Court: I do not think that is of any consequence.

(By Mr. Woolsey:)

Q. 3. Did any one else have anything to do with ordering coal for the company for the season of 1914, except yourself?

Ans. Nobody.

Q. 4. You had entire charge of it, did you?

Ans. I did.

Q. 5. Now, Mr. Meadows, this agreement which has been marked Defendant's Exhibit 1 for Identification, was that the agreement under which the first cargo of coal was furnished in 1914?

Ans. That was.

Q. 6. And the second cargo was furnished——

Ans. Under exactly similar conditions.

Q. 7. Was there an agreement that they should be a lien on the entire fleet, to furnish that cargo, the second cargo, and all other cargoes——

Mr. Gardner: That instrument must be interpreted according to its terms.

91 By the Court: The question is somewhat suggestive.

Mr. Woolsey: I am referring to the prior arrangement.

By the Court: I think the question is altogether too leading for a case of this kind.

(By Mr. Woolsey:)

Q. 8. Now, Mr. Meadows, what was your idea in having that contract, that agreement made in respect to the first cargo?

Mr. Gardner: Objected to.

By the Court: Objection sustained.

(By Mr. Woolsey:)

Q. 9. On May 28th did you receive a letter from the Atlantic Phosphate & Oil Corporation—I mean, from the Piedmont & Georges Creek Coal Company?

Ans. I did.

Q. 10. And did you reply to that by the letter of May 28th?

By the Court: Are these exhibits in the case?

Mr. Woolsey: Yes, sir—Libellants' Exhibits 8 and 9.

Ans. I did.

Q. 11. What was the understanding, the agreement referred to in these letters?

Mr. Gardner: I object.

By the Court: What do the letters say?

Mr. Gardner: They are right in the letter. It states what the understanding was.

92 (The Court reads the letters in question.)

By the Court: Do you propose to go into anything outside of these letters?

Mr. Woolsey: I propose to show that those letters don't as I understand Mr. Gardner is going to contend, constitute a contract. They don't show place of delivery, time of delivery, credit, they don't show anything. I ask Mr. Meadows whether the agreement referred to in that letter of his, I ask him what that agreement is. You see in his letters on the second or third paragraph—

Mr. Gardner: Mr. Meadows has already testified very fully what the agreement was. Those letters speak for themselves.

Mr. Woolsey: I want to ask him what agreement was referred to by that letter, only the amount of coal is involved in that, nothing else, not the prices, nothing else. It can not be contended that is a contract of any kind. It is merely a confirmation as to the amounts.

By the Court: Well, there is nothing to be explained, is there?

Mr. Woolsey: It refers to "as per our agreement." I want to ask him what agreement he referred to.

By the Court: Ask him.

(By Mr. Woolsey:)

Q. 12. Mr. Meadows, in your letter of May 28th you refer to an agreement and state if the Piedmont & Georges Creek Coal Company wants any formal contract you will be glad to supply it. Will you state what agreement you referred to?

Ans. An agreement that in supplying the coal, if we supplied it, subject to maritime lien on the steamer,

93 Q. 13. And that exhibit——

By the Court: You mean by that, an oral agreement?
Ans. Yes.

Mr. Woolsey: An oral agreement, and this agreement which is marked Defendant's Exhibit 1 for Identification, was that a modification in respect to the first cargo of the general oral agreement?

Mr. Gardner: That document, it seems to me, certainly speaks for itself as to what he meant when he said they would have the first lien.

By the Court: Whether or not it was a modification you would have to look at the document itself.

Mr. Woolsey: That is all.

Mr. Gardner: That is all, Mr. Meadows.

Noon Recess.

(At the afternoon session counsel argue the case.)

Stipulation on Behalf of Claimant.

(Filed in the Consolidated Cause #1359, July 24, 1915.)

It is stipulated and agreed as follows:

1. That all of the vessels included within the above libel were described in and subject to a certain mortgage or deed of trust given by the Atlantic Phosphate & Oil Corporation to the Astor Trust Co. as Trustee, known as the Refunding Gold Bend Mortgage of the Atlantic Phosphate & Oil Corporation, bearing date July 1, 1913.
2. That on the twenty-ninth day of December, 1914, a bill of complaint praying for a foreclosure of and sale under said mortgage was filed in this Court by the Astor Trust Co. as Trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation, et als., Defendants, said cause appearing on the files of this Court as Equity No. 45; that said cause was thereafter consolidated with and now appears on the files of this Court as "Waldermar Schmidtmann, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44."
3. That thereafter on the eighth day of March, 1915, a decree of foreclosure and sale under said mortgage was entered in the above entitled consolidated cause, and subject to the provisions thereof all of the vessels included within the above libel and subject to said mortgage as aforesaid were sold at public auction on the twenty-fourth day of April 1915, by the Receivers of the Atlantic Phosphate & Oil Corporation, acting as Special Masters under and by virtue of said decree; that said vessels were purchased at said sale by J. Treadwell Bullwinckel, acting for and on behalf of the Seaboard Fisheries Co. Inc., a corporation organized under the laws of the State of New York and having an office in the Borough of Manhattan, in the City and State of New York, the said Seaboard Fish-

eries Co., Inc. being the claimants herein; that the said vessels were conveyed and transferred by said Special Masters to said Seaboard Fisheries Co. by separate bills of sale dated May 29, 1915.

95 4. That the decree of foreclosure and sale entered in the cause of "Waldemar Schmidtman, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44," hereinbefore referred to in paragraph 3, excepting therefrom, however, all descriptions of real estate contained therein, shall be and it hereby is introduced as evidence in this cause, and shall be marked "Defendant's Exhibit No. 12" subject, however, to the right of the libellant to object as to the materiality, relevancy or competency in these proceedings of the said decree or the matters therein referred to.

CONVERSE & KIRLIN,
FRANK HEALY,

Proctors for Libellants.
GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Stipulation on Behalf of Libellant.

(Filed in Consolidated Cause # 1359,) August 20, 1915.

It is stipulated and agreed as follows:

1. That the following questions and answers may be added as herein indicated, to the testimony of Charles R. Horton taken at a hearing held June 14, 1915 in the case of Benjamin Marchant, et al., libellants, vs. Fishing Steamer Edwards, libellee Admr. No. 96 1334, which testimony has been stipulated into this consolidated cause, and it is admitted and agreed that said Charles R. Horton would testify in manner and form therewith if recalled as a witness therein.

Testimony of Charles R. Horton, page 63, after question 26 and before question 27 insert the following questions and answers:—

Q. 26a. Walter Adams?

A. 99 tons.

Q. 26b. Alaska?

A. 304 tons.

Q. 26c. Arizona?

A. 35 tons.

Q. 26d. George Curtiss?

A. 193 tons.

Q. 26e. Montauk?

A. 121 tons.

Q. 26f. Quickstep?

A. 19 tons.

Q. 26g. Ranger?

A. 253 tons.

Q. 26h. East Hampton?

A. 482 tons.

Q. 26i. Sanford?

A. 3 tons.

Q. 26j. Strong?

A. 157 tons.

Q. 26k. And how much coal was supplied to the factory?

A. 891 tons.

2. That "Plaintiff's Exhibit 6" introduced on behalf of the libellants and referred to on pages 67 and 68 of said testimony is to evidence of Charles E. Miligan, offered by the libellants as evidence as to the distribution of all the coal therein referred to and shall be considered as in evidence for such purpose, subject only to the objections by the said claims as appears in the testimony upon the offer of said plaintiff's exhibit 6.

3. That answers to the interrogatories propounded in the cause entitled "Piedmont & Georges Creek Coal Company vs. Fishing Steamers Walter Adams, et al., Admr. No. 1359," now included within the above entitled consolidated cause, are hereby waived.

4. That all the evidence presented to the court at said hearing held on June 14, 1915 in the case of Benjamin Marchant et. al., Libellants, v. Fishing Steamer Edwards, Libellee, Admr. No. 1334 were conditions or the amendments therein stipulated and shall be considered for all purposes as evidence presented in the above entitled consolidated cause subject to either party to press objections made at the trial.

98 *Libellant's Exhibit 1, Consisting of 9 Orders.*

(Filed in Consolidated Cause #1359).

Atlantic Phosphate & Oil Corporation.

New York, Feb. 17, 1914.

Order No. 1015.

Req. No. 2718.

M Piedmont & Georges Creek Coal Co. 30 Church St., City.

Please Fill our Order for the Following and Ship Via Barge "Crystal". To Promised Land, L. I. 1083 tons of Coal, \$3,032.40, @ \$2.80 per ton, f. o. b. Port Reading, N. J.

(Shipped by you to Promised as per bill of lading of Feb. 11, 1914. Billed by you Feb. 13, 1914—\$3,032.40).

ATLANTIC PHOSPHATE & OIL
CORPORATION.
R. M. ROUND.

Atlantic Phosphate & Oil Corporation.

New York, March 25, 1914.

Order No. 1092.

Req. No. 66.

M Piedmont & Georges Creek Coal Co. 30 Church St., City.

Please Fill our Order for the Following and Ship Via Barge B. F. Mesick, to Promised Land, L. I. 1 Barge Bituminous Coal 679 tons at 2.80, f. o. b. Port Reading.

(Shipped by you to Promised as per bill of lading of March 9, 1914.

Billed by you March 23, 1914.—\$1,901.20

Advances—	47.74
-----------	-------

 1,948.94

ATLANTIC PHOSPHATE & OIL CORPORATION.

R. M. ROUND.

99

Atlantic Phosphate & Oil Corporation.

NEW YORK, May 5, 1914.

Order No. 1218.

Your order No. 568.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Please fill our order for the following and ship via barge "Crystal," to Promised Land, L. I.: 1,068 tons of Georges Creek Thin Vein \$3.30 gross ton. F. o. b. Promised Land, L. I.

(Confirmation of your Shipment of May 2, 1914.)

May 6, 1914. Rec'd.

ATLANTIC PHOSPHATE & OIL CORPORATION.

R. M. ROUND.

Atlantic Phosphate & Oil Corporation.

NEW YORK, May 13, 1914.

Order No. 1273.

Req. No. (Your Order No. 578.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Please fill our order for the following and ship via Boat "Frank Jenkins" to Tiverton, R. I.: 750 tons Georges Creek Thin Vein Coal at 3.40 per ton. C. I. F., Tiverton, R. I.

(Per Confirmation of May 12th, 1914.)

May 14, 1914. Rec'd.

ATLANTIC PHOSPHATE & OIL CORPORATION.

R. M. ROUND.

100

Atlantic Phosphate & Oil Corporation.

NEW YORK, May 29, 1914.

Order No. 1353.

Your O. No. 593.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Via Boat Crystal, to Promised Land, L. I., 900 tons Georges Creek,
\$3.65 gross ton.

(Delivered C. I. F. Promised Land.

(Per verbal agreement with Our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL
CORPORATION.

R. M. ROUND.

June 1, 1914. Rec'd.

Atlantic Phosphate & Oil Corporation.

NEW YORK, June 8, 1914.

Order No. 1394.

Your Order No. 602.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City:

Please fill our order for the following and ship via barge Rhode
Island, to Promised Land, L. I., 1200/1400 tons Georges Creek Coal,
\$3.10 gross ton, f. o. b. St. George.ATLANTIC PHOSPHATE & OIL
CORPORATION.

R. M. ROUND.

June 9, 1914. Rec'd.

101

Atlantic Phosphate & Oil Corporation.

NEW YORK, May 29, 1914.

Order No. 1352.

Your O. No. 594.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York
City:Via Boat Harry Husted to Promised Land, L. I., 900/1100 tons
Piedmont Coal, \$3.30 gross ton.

(Delivered C. I. F., Promised Land.

(Per verbal agreement with Our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL
CORPORATION.

R. M. ROUND.

Jun- 1, 1914., Rec'd.

Atlantic Phosphate & Oil Corporation.

NEW YORK, June 17, 1914.

Order No. 1438.

Req. No. 876.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City :

Please fill our order for the following and ship via — to Tiverton, R. I., one (1) cargo of about 700 tons of bituminous coal "Georges Creek".

(Per our letter of 6/16/14.)

June 18, 1914.

ATLANTIC PHOSPHATE & OIL
CORPORATION.

R. M. ROUND.

102

Atlantic Phosphate & Oil Corporation.

NEW YORK, July 2, 1914.

Order No. 1557.

Req. No. —.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City :

Please fill our order for the following and ship via barge Rhode Island to Amagansett, L. I.

To 1439-00 tons Coal at \$3.10\$4460.90

Towing & Trimming Charges 65.17

\$4526.07

(Per verbal agreement with our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL
CORPORATION.

R. M. ROUND.

103

LIBELLANT'S EXHIBIT 2.

(Filed in Consolidated Cause #1359.)

Piedmont & Georges Creek Coal Co.

FROSTBURG, MD., September 11, 1914.

Atlantic Phosphate & Oil Corp., 165 Broadway, New York City.

GENTLEMEN: You being the present owners of the following boats:

Steamship "Herbert N. Edwards"

" " "Rollin E. Mason"

" " "Martin J. Marran"

" " "Amagansett"

" " "William D. Murray"

wish to say that we have charges against the above named boats amounting to \$17,850.73, summarized as follows:

Steamship "Herbert N. Edwards" and owners, as per invoice #5057, dated May 19, 1914	\$3,006.30
Steamship "Rollin E. Mason" and owners, as per invoice #5033, dated May 23, 1914	3,365.30
Steamship "Martin J. Marran" and owners, as per invoice #6004, dated June 9, 1914	3,724.31
Steamship "Amagansett" and owners, as per invoice #6026, dated June 20, 1914	3,228.75
Steamship "William D. Murray" and owners, as per invoice #7010, dated July 3, 1914	4,526.07
	<hr/>
	\$17,850.73

104 The date for payment of these bills is past due, and since the checks you furnished us in payment of same were sent through the banks for collection but returned protested for non-payment with the statement "not sufficient funds", we therefore beg to inquire how and when you expect to liquidate these accounts.

Upon the personal request of your Mr. Meadows, we have refrained from taking any legal action as a protection to these claims, but it has been currently rumored that other creditors have indicated their intention of so doing, and while we do not wish to be a party to any action that would prevent or hinder your desires in operating your floating equipment and plant to the end of the season, with the hope of a favorable turn of fortune, enabling you to bring good from what so many term uncertainty, still you surely realize that we are only a small concern and the loss of this account would completely ruin us and embarrass our friends, and for this reason we are compelled to use every available method within reason to protect ourselves, but before taking any action we shall await a letter from you explaining the true conditions, and what in your opinion would be a prudent step under the conditions to further protect us and our friends, as we must do something to assure them that these accounts are fully protected.

We would also appreciate very much if you would state whether our claim would take precedence over mortgage, and if there are other supply bills charged against boats and owners and the extent of same.

Your prompt reply will greatly oblige,

Yours truly,

PIEDMONT & GEORGE'S CREEK
COAL CO.
J. S. BROPHY.

105

LIBELLANT'S EXHIBIT 3.

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Office, 165 Broadway.

NEW YORK, N. Y., Sept. 15, 1914.

Piedmont & Georges Creek Coal Company, Frostburg, Maryland.

GENTLEMEN: This will acknowledge your favor of the 11th relative to the bills which you have against our steamers for coal furnished us last season.

We fully appreciate your position and we doubly appreciate the extreme courtesy which you have shown us in carrying these bills as you have done. It will be our constant effort to reduce these bills as much as possible during the next few weeks. The cool weather which we have had for a week past has interrupted our operations temporarily, but the after effects of this weather are bound to be favorable, and we think you are going to be agreeably surprised with the progress which we make reducing your bills during the next three or four weeks.

We appreciate your refraining from taking legal action in the matter as the action which you would have to take against our steamers would surely result disastrously for the Company. Your interests cannot suffer by deferring action until the end of the season. Our understanding is that the bills against our steamers are preferred claims, ahead of the mortgage. Aside from the bills which you hold against the boats, Burns Bros. have claims of four or five thousand dollars, all told, spread over twelve or fifteen of
106 the boats, and there may possibly be two or three thousand dollars of other scattered claims against the steamers. We do not think that the total merchandise bills against our steamers, outside of your own, could possibly aggregate \$10,000. You should take into consideration, of course, that the wages of the men on the steamers would have to be treated as a claim against the boat in case we should discontinue operations, before these payrolls are paid, but the total amount of wages against any one steamer would not exceed twelve to fifteen hundred dollars per month, and these we are keeping paid pretty promptly, as you know.

If there is any further information which we can give you in connection with this matter, please advise.

Yours very truly,

ATLANTIC PHOSPHATE & OIL
CORPORATION.T. C. MEADOWS, *Vice Pres.*

T. C. M/A.

107

LIBELLANT'S EXHIBIT 4.

(Filed in Consolidated Cause #1359.)

FROSTBURG, Md., March 9, 1915.

Atlantic Phosphate & Oil Corporation, New York City, To Piedmont and George's Creek Coal Co., Dr., Miners and Shippers of George's Creek-Cumberland Coal.

Payments due on or before the 15th of each month for Coal shipped the preceding month. After this date subject to sight draft.

Statement No. 1.

Date.	Boat.		Amount.	Total.
1913.				
July 30.	"Kingdon."	To 928.40 tons T/V(a) \$3.30 g. t. delivered to Promised Land.	\$3,062.40	
Aug. 7.	"Frank Jenkins."	To 811.00 tons T/V(a) \$3.30 g. t. delivered to Promised Land. Bought 764 tons of the above from B. Nicoll & Company...	2,676.30	
Sept. 2.	"Kingdon."	To 869.00 tons T/V(a) \$3.30 g. t. delivered Promised Land.... To 27 tons Anthracite (a) \$5.75 delivered Promised Land.... To Insurance on Anthracite coal 50c. per \$100.00.....	2,966.70 155.25 .70	
			<hr/> \$8,861.35	\$8,861.35

Credits.

Sept. 30.	By Cash.....	\$500.00	
Oct. 25.	" Cash.....	1,500.00	
Nov. 18.	" Cash.....	2,500.00	
Dec. 19.	" Cash.....	161.35	
1914.			
Jan. 7.	" Cash.....	200.00	
108			
Feb. 9.	" Cash.....	200.00	
		<hr/> \$5,061.35	\$5,061.35
			<hr/> \$3,800.00
Feb. 9.	By note secured by five \$1,000 bonds par value \$5,000.....	\$3,800.00	
Aug. 25.	By Cash.....	\$2,000.00	
	Balance with interest still standing.....	\$1,800.00	

LIBELLANT'S EXHIBIT 5.

(Filed in Consolidated Cause #1359.)

FROSTBURG, Md., March 9, 1915.

Atlantic Phosphate & Oil Corporation, New York City, To Piedmont and George's Creek Coal Co., Dr., Miners and Shippers of George's Creek-Cumberland Coal.

Payments due on or before the 15th of each month for Coal shipped the preceding month. After this date subject to sight draft.

109

Statement No. 2.

Date.	Boat.		Amount.	Total.
1914.				
Feb. 11.	"Crystal."	To 1083 tons Gas Coal @ \$2.80 f. o. b. Port Reading.....	\$3,032.40	Note.
		To Towing & Trimming charges.....	71.98	
Mar. 9.	"B. F. Mesick."	To 670-00 tons Gas Coal @ \$2.80 f. o. b. Reading.....	1,901.20	Note.
		To Towing & Trimming charges.....	47.74	
May 2.	"Crystal."	To 1068-00 tons T/V @ \$3.30 delivered to Promised Land.....	3,524.40	Cash.
May 12.	"Frank Jenkins."	To 765-00 tons T/V @ \$3.40 delivered alongside Tiverton.....	2,397.00	Cash.
May 19.	"Harry Husted"	To 911-00 tons T/V @ \$3.30 delivered to Promised Land.....	3,000.30	Charged to Boat "Herbert N. Edwards."
May 23.	"Crystal."	To 922-00 tons Geo. Creek @ \$3.65 del. Promised Land.....	3,305.30	Charged to Boat "Rollin E. Ma- son."
June 9.	"Rhode Island."	To 1187-00 tons Best Coal @ \$3.10 f. o. b. St. George.....	3,679.70	Charged to Boat "Martin J. Marran."
June 20.	"H. Walker."	To Docking & Trimming charges.....	44.61	
		To 861-00 tons Best Coal @ \$3.75 del. alongside Tiverton.....	3,228.75	Charged to Boat "Amagansett"
July 3.	"Rhode Island."	Loaded at St. George.		
		To 1439-00 tons Best Coal @ \$3.10 f. o. b. Port Reading.....	4,460.90	Charged to Boat "Wm. B. Mur- ray."
		To towing & trimming charges.....	65.17	
			\$28,825.45	\$28,825.45
<i>Credits.</i>				
June 24.		By Cash (For Cargo of May 2).....	\$3,524.40	
July 10.		" " (For cargo of May 12).....	2,397.00	
				5,921.40
		Balance due from first three cargoes sold in 1913.....		\$22,904.05
		Interest and protest fees.....		1,800.00
				36.11
		Total.....		\$24,740.16

110

LIBELLANT'S EXHIBIT 6.

(Filed in Consolidated Cause #1359.)

JULY 31, 1914.

		Str. "Mason" Operating Acct.
7/5	36.25	tons of Coal
7/25	60	" " "
		Str. "East Hampton" Operating Acct.
7/5	23.75	tons of Coal
7/10	58	" " "
		Str. "Marran" Operating Acct.
7/5	32.5	tons of Coal
		Str. "Murray" Operating Acct.
7/19	38	tons of Coal
7/15	53	" " "
		Str. "Alaska" Operating Acct.
7/7	21.75	tons of Coal
7/19	27	" " "
		Str. "Ranger" Operating Acct.
7/7	21	tons of Coal
		Str. "Montauk" Operating Acct.
7/7	15.5	tons of Coal
7/28	14	" " "
		Str. "Strong" Operating Acct.
7/28	9.75	tons of Coal
Total	410-1/2 tons	

111

TIVERTON, R. I., July 31, 1914.

Sold to Tiverton Expense—Coal.
15.8 tons of Coal.

Aug. 27, 1914.

Bought of Atlantic Phosphate & Oil Corp., Tiverton, R. I.

		Str. "Montauk"
8/3	27	tons of Coal
		Str. "Rollin E. Mason"
8/20	22	tons of coal
8/23	17-1/4	tons of coal
	7-675	

		Str. "Ranger"
8/6	20-1/2	tons of coal
8/9	11-3/4	" " "
8/16	15-1/4	" " "
		Str. "George Curtiss"
8/6	20-1/2	tons of Coal
8/16	16	" " "
		Str. "William B. Murray"
8/6	27-3/4	tons of coal
		Str. "Alaska"
8/5	10-3/4	tons of coal
8/9	21	" " "
8/30	15-3/4	" " "
112		
		Str. "Walter Adams"
8/5	22-1/4	tons of coal
		Str. "Nat Strong"
8/5	8-1/2	tons of coal
		Str. "Charles B. Sanford"
8/27	13	tons of coal
		Str. "East Hampton"
8/26	17	tons of coal
Total	286-1/4 tons	

TIVERTON, R. I., Aug. 31, 1914.

Sold to Tiverton Expense—Coal.
5 Tons of Coal.

TIVERTON, R. I. September 11, 1914.

		Str. "Rollin E. Mason"
9/2	17-1/2	tons of Coal
		Str. "East Hampton"
9/2	26-1/2	tons of Coal
113		
		Str. "Alaska"
9/4	17	tons of coal
		Str. "Martin J. Marran"
9/6	9-1/4	tons of Coal

9/10	7	Str. "Adroit" tons of Coal
9/1	9	Str. "Ranger"
9/11	7	tons of Coal " " "
Total	93¼	tons

114 CLAIMANT'S EXHIBIT 1.

(Filed in Consolidated Cause #1359.)

Contract.

30 CHURCH ST., NEW YORK, Feb. 13th, 1914.

The Piedmont & Georges Creek Coal Company of Frostburg, Md., and 30 Church Street, New York City, agrees to sell and the Atlantic Phosphate & Oil Corporation agrees to purchase cargo of Bituminous Coal at price of Two Dollars and eighty cents (\$2.80) per gross ton, E. O. B. Boat, New York Harbor Loading Piers on the following terms of payment:

Five Months' Note to be executed from date at six per cent interest and to be secured by first mortgage bonds of the Atlantic Phosphate & Oil Corporation in the ratio of approximately Two Dollars in Bonds against One Dollar on the account; Note and Bonds to be taken up from the first advances account of operations i. e., such monies as are advanced by the Banks or Purchasing Companies when fishing operations start; money advances being customary on this class of business, and the above mentioned cargo being an advance of material necessary in the operation of the plant and steamers before any material can be produced; consequently a first *loan*, and will be handled and taken care of accordingly.

Signed in duplicate.

Accepted:

By S. J. BOHANNON,
*For Piedmont & Georges Creek
Coal Company.*

Accepted:

By H. SICKLES,
*Vice President for Atlantic
Phosphate & Oil Corporation.*

CLAIMANT'S EXHIBIT 7.

(Libellant's Exception noted)

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Offices 165 Broadway.

NEW YORK, N. Y. June 16, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

GENTLEMEN: We are just advised by our Tiverton plant that their supply of coal has been pretty well exhausted in starting the boats out and that they can use another cargo of about 700 tons whenever it suits your convenience to ship it to them. You may therefore consider this as an order for such a cargo when it is convenient for you to make the delivery.

Yours very truly,

ATLANTIC PHOSPHATE & OIL
CORPORATION,

By T. C. MEADOW.

TCM/A.

CLAIMANT'S EXHIBIT 8.

(Libellant's Exception noted.)

(Filed in Consolidated Cause No. 1359.)

Piedmont & Georges Creek Coal Co.

NEW YORK CITY, May 28th, 1914.

Atlantic Phosphate & Oil Corporation, No. 165 Broadway, New York.

Attention Mr. T. C. Meadows.

GENTLEMEN: This is to confirm agreement for the furnishing of your coal requirements at Promise Land and Tiverton, for the current season, coal to be invoiced as follows:—

10,000 tons our best grade Georges Creek Cumberland Coal on basis of \$3.10 gross ton, New York Loading Piers.

Balance of your requirements for this grade of fuel to be filled on basis of \$3.05 gross ton, New York Loading Piers.

All the Piedmont, or our second grade of Georges Creek to be billed on basis of \$2.75 gross ton, New York Loading Piers.

This is not a formal contract, but is as per the writer's understanding with you a few days ago.

Yours truly,

PIEDMONT & GEORGE'S CREEK
COAL CO.

S. J. BOHANNON,

S. J. B/B. B.

Manager Sales.

117

CLAIMANT'S EXHIBIT 9.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Offices 165 Broadway,

NEW YORK, N. Y. May 28, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

Attention Mr. S. J. Bohannon, Manager of Sales.

GENTLEMEN: This will acknowledge your favor of the 28th, confirming our agreement relative to our requirements of coal at Promised Land, and Tiverton for the coming season.

The prices mentioned by you in this letter are in accordance with our understanding of the agreement and are satisfactory.

If at any time you wish a more formal contract than this letter we shall, of course be glad to supply it.

Yours very truly,

ATLANTIC PHOSPHATE & OIL
CORPORATION,

By T. C. MEADOW.

T. C. M./A.

118

CLAIMANT'S EXHIBIT 10.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause #1359.)

NEW YORK CITY, August 24th, 1914.

Atlantic Phosphate & Oil Corp. 165 Broadway, New York.

DEAR SIR: We beg to acknowledge receipt of sight draft on Proctor & Gamble Co., Cincinnati, O. for \$2,000 against 8,000 gallons fish-oil loaded in tank car PGx-411, with bill of lading and bill attached, calling for \$2,240 on Proforma No. 10.

Yours truly,

PIEDMONT & GEORGES CREEK
COAL CO.

S. J. BOHANNON,

Manager Sales.

CLAIMANT'S EXHIBIT 11.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause No. 1359.)

H. Brua Campbell, 37 Wall Street, New York.

To Atlantic Phosphate & Oil Corporation, 165 Broadway, New York City:

Take Notice, That the Piedmont & George's Creek Coal Company has a lien against personal property, now in its possession and belonging to your Company, of the following description:

\$13,300 par value of Refunding Mortgage 20 Year Sinking Fund Gold Bonds of Atlantic Phosphate & Oil Corporation of the following numbers and denominations—5 bonds \$1,000 each, Nos. M-890 to M-894 inclusive—5 bonds \$1,000 each, Nos. M-961 to M-966 inclusive; 33 bonds \$100 each Nos. C-262 to C-294 inclusive.

That such lien is based upon the pledge of the above enumerated bonds with said Coal Company by your Company as collateral security for certain promissory notes of your Company in favor of the Piedmont & George's Creek Coal Company as follows:

Promissory note, No. 748, dated September 24, 1914, for the sum of \$2,020.92 due and payable to the order of the Piedmont & George's Creek Coal Company on October 26, 1914, with interest at 120 6% per annum, to which note there was attached \$3,300 par value of the above bonds.

Promissory note, No. 782, dated October 14, 1914, for the sum of \$3,800, due and payable to the order of Piedmont & George's Creek Coal Company on November 14, 1914, with interest at 6% per annum to which note there was attached \$5,000 par value of the above bonds.

Promissory note, No. 781, dated October 14, 1914, for the sum of \$3,032.40 due and payable to the order of Piedmont & George's Creek Coal Company on November 14, 1914, with interest at 6% per annum, to which note there was attached \$5,000 par value of the above bonds.

That the above notes were given and the above-mentioned bonds pledged by your Company to secure to the Piedmont & George's Creek Coal Company payment of indebtedness incurred by your Company for coal furnished and delivered by said Coal Company to your Company.

That the par value of the bonds pledged as collateral security for said notes is the sum of \$13,300.

That the aggregate principal amount of the above notes of your Company is the sum of \$8,853.32. That of this amount the sum of \$6,853.32 remains unpaid. That upon the maturity of said notes they were duly presented and payment demanded, and were duly protested upon payment being refused. That, in addition to said sum of \$6,853.32, there is also due and owing, at the date of this

notice, interest on said notes at the rate of 6 per cent per annum, amounting to \$103.89, making total amount of the lien claimed, at the date of this notice, the sum of \$6,957.22.

You are hereby required to satisfy such lien and pay the amount thereof to the undersigned company on or before the 22nd day of January 1915.

121 If such lien is not satisfied and the amount thereof paid to the undersigned company on or before such date, the bonds above described will be sold by the undersigned company at public sale to the highest bidder at Exchange Salesroom, Nos. 14 & 16 Vessey St., New York City, on the 10th day of February, 1915, at 12.30 p. m., as provided by Article VII of the Lien Law of the State of New York.

Dated January 4, 1915.

THE PIEDMONT & GEORGES CREEK
COAL CO.

By J. S. BROPHY,

Pres.,

Lienor.

STATE OF MARYLAND,

County of Allegany, To wit:

John S. Brophy, being duly sworn, deposes and says, that he is the president of the lienor Company named in the foregoing notice; that he has read such notice and knows the contents thereof; that the lien claimed therein on the personal property therein described is a valid one; that the debt upon which such lien is founded is due and no part thereof, except the sum of \$2,000 has been paid; and that the facts stated in such notice are true to the best of his knowledge and belief.

J. S. BROPHY.

Subscribed and sworn to before me this 8th day of January, 1915,
PAUL L. HITCHINS,

Notary Public.

My Commission expires 1st Monday in May 1916.

122

Stipulation as to Exhibits.

(Filed in Consolidated Cause No. 1359.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12 may be omitted from the printed record on appeal, and that the originals be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimants.

123 District Court of the United States, District of Rhode Island
Adm. 1335, 1333, 1334, 1327, 1329, Now Consolidated in Adm. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

The Fishing Steamers WILLIAM B. MURRAY, ROLLIN E. MASON, Herbert N. Edwards, Martin J. Marran, Amagansett, Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, Their Engines, Boats, etc.

(Filed in Consolidated Cause #1359.)

Opinion of the Court.

JANUARY 29, 1917.

BROWN, J.:

The Piedmont & Georges Creek Coal Co. seeks to establish maritime liens for coal supplied under contracts with the Atlantic Phosphate & Oil Corporation, which, in 1913 and 1914, was the owner of a fleet of nineteen fishing vessels, and of lands and fish factories at Promised Land, Long Island, and at Tiverton, Rhode Island. All this property was mortgaged to the Astor Trust Co. of New York, as trustee, to secure an issue of bonds.

The coal was sent in five shipments; the first 911 tons, May 19, 1914; the second, 922 tons, May 23, 1914; the third, 1187 tons, June 9, 1914; and the fifth, 1439 tons, July 3, 1914, were all delivered at Promised Land. The fourth shipment, 861 tons,

124 June 20, 1914, was delivered at Tiverton, R. I. The invoices and manifests were, in each instance, made out to the Oil Corporation, and the name of no vessel belonging to the Oil Corporation was mentioned.

At the time of the delivery of the first shipment at Promised Land there were already in bins on the pier 1068 tons of coal which had been paid for, and the four cargoes were dumped on the same pile. Coal from these bins was used by the Oil Corporation both for the operation of its fleet of nineteen vessels and for running the boiler plant at Promised Land. The coal delivered at Tiverton, R. I., was unloaded on the pier, and subsequently was used in part by ten of the Oil Corporation's vessels and in part by the boiler plant on shore.

All of these deliveries were charged on the books of the Coal Company against the Oil Corporation, and there were no entries charging any of the coal against specific vessels.

The Act of June 23, 1910, Chapter 373, 36 Stats. 604, provides:

"That any person furnishing repairs, supplies or other necessities, including the use of dry dock or marine railway to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or if a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

The principal question is whether the evidence shows that the Coal Company, libellant, was a "person furnishing supplies to a vessel," within the meaning of the statute.

The documentary evidence in the case,—the books of the Coal Company, the original invoices, etc.,—are in the ordinary form which would be used in supplying coal to a purchaser at his dock or pier without regard to its subsequent use by the purchaser.

Defendant's exhibits 8 and 9 are as follows:

EXHIBIT 8.

NEW YORK CITY, May 28, 1914.

Atlantic Phosphate & Oil Corporation, No. 165 Broadway, New York.

Attention of Mr. T. C. Meadows.

GENTLEMEN: This is to confirm agreement for the furnishing of your coal requirements at Promised Land and Tiverton, for the current season, coal to be invoiced as follows:

10,000 tons our best grade Georges Creek Cumberland coal on basis of \$3.10 gross ton, New York Loading Piers.

Balance of your requirements for this grade of fuel to be filled on basis of \$3.05 gross ton, New York Loading Piers.

All the Piedmont, or our second grade of Georges Creek to be billed on basis of \$2.75 gross ton, New York Loading Piers.

This is not a formal contract, but is as per the writer's understanding with you a few days ago.

Yours truly,

PIEDMONT & GEORGES CREEK
COAL CO.

S. J. BOHANNON,

Manager Sales.

S. J. B./B. B.

126

EXHIBIT 9.

NEW YORK, N. Y., May 28, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

Attention Mr. S. J. Bohannon, Manager Sales.

GENTLEMEN: This will acknowledge your favor of the 28th, confirming our agreement relative to our requirements of coal at Promised Land and Tiverton for the coming season.

The prices mentioned by you in this letter are in accordance with our understanding of the agreement and are satisfactory.

If at any time you wish a more formal contract than this letter we shall, of course, be glad to supply it.

Yours very truly,

ATLANTIC PHOSPHATE & OIL
CORPORATION,

T. C. M./A.

By T. C. MEADOWS.

These letters, which were intended as an informal memorandum of the agreement, contain no reference to the furnishing of coal for any particular use, and no reference to a lien.

Long after the five shipments had been delivered, and after checks for the same had been protested, legal proceedings against the Oil Corporation were threatened by the Coal Co., to avoid which it was agreed that the entire amount of coal furnished should be charged against the Oil Corporation's best five boats, as a security for the claim. The headings of the original invoices, in possession of the Oil Corporation, in which the charges were against the Oil Corporation, were torn off and new headings were pasted on charging

127 ing coal to each of the five selected vessels and owners. This appears by libellant's exhibits: number 2 dated September 11, 1914, and number 3 dated September 15, 1914.

The intention of this arrangement was to give security upon five selected vessels for the coal already delivered to the owners.

There is nothing in the documentary evidence relating to prior dealings which, in terms shows a specific agreement for a maritime lien for these five shipments.

The Oil Corporation went into the hands of receivers in October, 1914, and the Coal Company filed petitions which were based upon the subsequent arrangement of September 1914 rather than upon the original agreement which preceded the delivery of the coal.

When the present case was brought on for hearing the libellant took the position that the parties, by agreement, might create a maritime lien on such of the vessels as they might select, irrespective of the amount of coal actually furnished to or used by these vessels. Upon expressions of doubt by the Court as to the soundness of this contention in point of law the libellant filed a libel against seven other vessels.

The case presented by the consolidated libels is much complicated by the artificial mode in which it is presented. Instead of giving a plain narration of fact the five original libels are artificially framed, and are based rather upon the agreement made for the prevention of litigation than upon the original agreement made for the furnishing of the coal. Oral testimony was presented at the hearing to the effect that as there was still a balance due for the previous year, and as the Oil Corporation was known to be largely indebted, an oral agreement was made that for coal furnished the Coal Company should have a maritime lien upon the entire fleet of the Oil Corporation.

128 I am of the opinion that the testimony shows that before the writing of the letters, Exhibits 8 and 9, the financial ability of the Oil Corporation to pay was discussed; and that it was understood by the contracting parties that the law would afford a lien upon the vessels for the coal, and that the Coal Company would thus have security. It was also understood by the parties that a large part of the coal furnished was to be used by vessels of the fleet.

The Statute of June 23, 1910 gives no authority for the creation of a maritime lien on vessels to which coal was not to be furnished. An agreement that certain vessels should be charged with the lien

for coal furnished to other vessels could have no effect to create a maritime lien which should take precedence of an existing mortgage. Even if the Coal Company expected that it was getting security upon the entire fleet irrespective of what use should be made of the coal, this was an erroneous conception of legal rights. However, it seems just to hold that the parties contracted in view of the fact that the statute afforded a right to a maritime lien, and that even if they misconceived the extent of this right or the mode of its enforcement, the libellant may be entitled to such a maritime lien as may arise under the statute upon the facts of the case.

That bills were made out and charges made to owners, or that notes were given, does not destroy the lien given by the act of June 23, 1910. The parties must be presumed to have contracted with so important a provision in mind; and though it might be a defense that the lien has been waived, we should require satisfactory and definite proof of such intention in order to deprive the libellant of such security as may be afforded by the statute.

As it appears from the testimony that the contract covering the coal in question was made at a time when it was known to
129 the libellant that the Oil Corporation was still in arrears for coal for the preceding year and was otherwise heavily indebted, and that receivership proceedings were contemplated, it is quite clear that the libellant had no intention to waive any of its rights to a maritime lien.

In the *Patapasco*, 13 Wall., 329, it was said concerning the condition of the company which owned a line of steamships, and which was hopelessly insolvent and was borrowing large sums on mortgage:

"It would be strange if the libellant did not know this condition of things, and, in the absence of proof on the subject, it is a reasonable inference that he did. If it had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished."

In the present case there is proof of the libellant's knowledge.

It may be said, therefore, that the parties contracted knowing that a large portion of the coal was to be used for a strictly maritime purpose, and in reference to such legal rights as existed under the United States statute.

As has been said, the theory of the libellant in filing his five original libels was that a contract for a lien on the fleet would permit the libellant to select any vessel for the enforcement of the entire lien, irrespective of the amount of coal furnished to that particular vessel.

The libellant cites *The Freights of The Kate*, et al., 53 Fed., 707; *The Erastina*, 50 Fed., 126; *The Advance*, 72 Fed., 793; *The Patapasco*, 13 Wall., 329; also the recent case of the *John L. Lawrence*, 231 Fed., 507. In the latter case the learned judge remarked:

130 "I can perceive no valid reason why, unless for some other cause, the libellants are deprived of a maritime lien, they may not have filed their libel upon each of the steamers for the entire amount and recovered the whole amount out of either of them."

Without considering this case in detail it may be observed that this dictum of the learned judge is not in accord with the decisions in this circuit.

In *The Kearsarge*, 1 Ware 546, Fed. Ct. No. 7634, upon a consideration of a lien statute of Maine, it was held by Judge Ware:

"If the owner is building two vessels at the same time, and materials are furnished generally for both, the material man has a lien on both the vessels, and may enforce it against either of them."

This case, on appeal, 2 Curtis 421, Fed. Ct. No. 7762, was reversed in an opinion by Mr. Justice Curtis, who said:

"I am unable to concur in so much of this opinion as holds that the statute gave a lien on both vessels for all the materials furnished, without regard to their use on one or the other. The statute in terms, for materials furnished for or on account of any vessel, gives the creditor a lien on such vessel for his materials. These terms do not give a lien on one vessel for materials furnished for or on account of another vessel, nor for and on account of it and another. The natural meaning of the words is, that for the price of materials furnished for a particular vessel, the creditor shall have a lien on that vessel. I do not think myself at liberty to give what is
131 called a liberal construction to these terms, so as to embrace in them a case they do not describe."

The language of the Maine statute,

"* * * or furnish materials for or on account of any vessel building or standing on the stocks, or under repairs, etc."

so far as the question before us is concerned, seems quite similar to the act of June 23, 1910.

The learned Justice also used the following language, which seems to be directly applicable to the case before us:

"At the same time, I think that where materials are furnished for two specific vessels, though the original contract does not appropriate them specifically to either, yet when they are afterwards appropriated, they may properly be considered as furnished for that vessel, in the construction of which they are used. The effect of such a contract is, to enable the builder to elect, to which of the two vessels he will appropriate them. When he has made that election and actually appropriated them or some part of them to one vessel, I can see no sound reason, why it may not be said with truth, that they were furnished for and on account of that vessel, and so, that the case is within the terms of the law."

This case was followed in *Berwind-White Coal Mining Co. v. Metropolitan S. S. Co.*, 163 Fed., 784. Judge Putnam, considering a single contract for machinery for two steamers, *The Harvard* and *The Yale*, held that where there is a joint sale of materials a lien cannot be maintained on any one vessel for the entire ma-
132 terials furnished for both vessels; but said that this was not inconsistent with the allowing of a lien after ascertaining what benefit each steamer received under the contract:

"The underlying equity is that the lien is supported by the fact that the labor and materials have actually gone into the property on which the lien is claimed, and increased its value."

This case on appeal, *American Trust Co., v. W. & A. Fletcher Co., Berwin-White Coal Mining Co., v. Same*, 173 Fed., 471, was affirmed. Although the case was thoroughly contested by eminent counsel, experienced in the admiralty law, the ruling of the court below that the furnishing of the materials removed any uncertainty arising from the fact that the contract was joint, so far as an examination of the briefs in that case discloses, was not questioned on appeal. In the opinion on appeal, 173 Fed., 479, it was said also:

"The contract of construction was made with reference to the statute, and a verbal incorporation of the statute into the terms of the contract, expressing in the language of the parties that which the Legislature has declared to be the law, must be an empty formality."

I find, therefore, that in contracting for this coal it was understood by both parties that it was to be principally used for strictly maritime purposes; that a large part of it was used for such purposes; and that the parties contracted in view of statutory rights to a lien.

It may be argued that when coal is delivered to bins on the wharf of a purchaser, who may use it as he pleases, on such of his ships as he may select, or upon land if he prefers, that the coal is furnished to the owner and not to a vessel. But such an argument upon the evidence in this case ignores the material fact that it was understood by both parties that the coal was procured and supplied largely for uses which were strictly maritime.

Doubtless a very substantial part of the inducement to the Coal Company to supply the coal was its knowledge of its intended use, by vessels, for maritime purposes, and its understanding that the law gave it a lien for coal supplied for such purposes. Upon the facts in this case it is most improbable that the coal would have been supplied to the owner and upon the owner's very doubtful credit.

I find that it was furnished because it was destined and intended to be used, in large part, by vessels; and that in the sense of the statute it was therefore furnished to vessels upon the faith of a lien thereon, and not to the owner.

The ultimate destination to vessels, and the use by vessels, being a material consideration, contemplated by both parties, it would be most unjust to the libellant to hold that it furnished the coal to the owner and only on the owner's credit. The mere fact that the names of the particular vessels to receive particular shipments of coal were unknown I cannot regard as material. The Oil Corporation was known to be the owner of a fleet of vessels, and it was known that these vessels would call from time to time at the Oil Corporation's wharves for their coal. That is sufficiently certain which, in the due course of the contemplated supply of coal to the fleet, would be made certain.

The subsequent appropriation of the coal to particular vessels by the owner being in pursuance of what was intended by both parties, logically relates to the question whether the coal was furnished by the libellant to a vessel. The course of the business of the owner's fishing fleet selected and made certain which of the vessels should receive the benefit of the libellant's coal and become subject to

134 a maritime lien corresponding to the benefit received. A contract to provide coal for such vessel of a fleet as might first arrive in port, and the delivery of coal ready at the owner's wharf for such vessel, would become definite on the arrival of the first vessel of the fleet.

As supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet; as supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels; as, at the time supplies are ordered, there may be uncertainty as to which vessel may require them and use them; the statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of the vessel which is to require the supplies.

The appropriation of the coal to a particular vessel, though made by the owner, yet if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a "furnishing" by the libellant to "a vessel," which is identified by the act of the owner in placing the coal aboard.

Cases which hold that supplies may be furnished to a vessel through not actually incorporated in or used by the vessel have no bearing in this case. While use and appropriation may not, in all cases, be necessary to make out a case of furnishing to a vessel, it does not follow that they may not afford conclusive evidence of the identity of a vessel and of the completion of a maritime lien thereon.

But the question of the effect of an appropriation to a particular vessel I regard as settled by the decisions of Mr. Justice Curtis, 135 and Judge Putnam, heretofore cited. In these cases it was at the outset uncertain which of two vessels might receive the supplies. In the present case it was uncertain which vessels of a fleet might receive them; but in this case, as in the cases cited, the uncertainty ended upon the owner's appropriation of the coal to special vessels.

Following the decisions of Justice Curtis in *The Kearsarge*, 2 Curtis 421, Fed. Cs. No. 7788, and of Judge Putnam in *Berwind-White Coal Mining Co. v. Metropolitan S. S. Co.*, 166 Fed., 784, I am of the opinion that for such coal as actually went into any vessels of the fleet the libellant is entitled to a maritime lien, upon such vessel; but that there can be no lien upon one vessel for coal supplies to another vessel. See also *The Yankee*, 233 Fed., 917, 927.

According to the evidence of Mr. Milligan, manager at Tiverton, out of the entire fourth shipment of 861 tons, 790 tons were thus received by vessels of the fleet; and a record was kept of the amounts received by the respective vessels. The agreed price was \$3.75 per ton.

There were shipped to Promised Land 4,459 tons of coal, at an average price of \$3.28 per ton. Vessels of the fleet received from bins at Promised Land 3,568 tons, and a record is presented of the

amounts received by particular vessels. Some uncertainty arises, however, from the fact that the 3,568 tons were taken from bins at Promised Land which contained not only the 4,459 tons of coal furnished under the contract, and for convenience called by counsel "lien coal," but also 1,068 tons of coal that had been paid for. The entire amount of coal on hand was,

4,459 tons lien coal, so called,
1,068 tons non-lien coal

5,527 tons.

If we should deduct from the 3,568 tons received by the vessels the whole amount of 1,068 tons of non-lien coal, it would follow
136 with mathematical certainty that 2,500 tons of lien coal were used by vessels of the fleet. Upon this view of the case it would seem that there should be deducted from the amounts furnished each steamer at Promised Land a part of 1,068 tons proportionate to the whole amount received by a particular vessel. But it hardly is just to assume that all of the 1,068 tons of non-lien coal went to the vessels. The confusion of lien coal and non-lien coal cannot be treated in the same light as a confusion of goods by a tortfeasor, against whom every assumption will be made. The Idaho, 93 U. S., 575, 585.

The proportion of non-lien coal, 1,068, to the whole amount in the bins, 5,527, is less than one-fifth. For practical purposes a deduction of .20 from the amount received by each ship would seem to give a result that would be fair, and as accurate as the nature of the case admits.

I am of the opinion that the libellant is entitled to liens upon the respective vessels, the amount thereof to be determined upon the principles above stated. Any objection to the mode of computation, or to the accuracy of the figures may be heard upon the settlement of the terms of the decree.

There remains a question as to the application of payment to the Coal Company of the sum of \$2,000., made on or about August 24, 1914.

At this time the Coal Company held notes of the Oil Corporation that were not yet due. The book account for the five shipments of coal for which a lien is now claimed was then due. After the receivership of October 19, 1914, this payment was credited upon one of the notes, which had been renewed after the receipt of the check for \$2,000.

To so credit the amount after the receivership would result in prejudice to the mortgagee by subjecting the property to a maritime lien to the amount of about \$2,000.

I am of the opinion that this payment should be applied to
137 the open account rather than to the notes not due at the time of payment, and that the claim for maritime liens must be reduced by the amount of the payment of August 24, 1914; either by a pro rata reduction or by the extinguishment of the claims upon certain vessels, as shall hereafter be determined.

Counsel for the libellant may present a draft decree, within twenty days, in accordance with the above opinion; and objections to and corrections thereof may be filed within ten days thereafter.

138 *Claimants' Objections to Draft Decree Filed by the Libellant.*

(Filed in Consolidated Cause #1359—July 9, 1917.)

Now comes the claimants in the above entitled cause and file their objections to the draft decree filed by counsel for the libellant.

1. Because no credit has been given or allowed in the said draft decree for the payment of \$2,000 made by the Atlantic Phosphate & Oil Corporation to said libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of maritime liens on several vessels li-eled in said cause, in accordance with the opinion of this court in said cause filed January 29, 1917.

2. Because said payment of \$2,000 is applied "in reduction of the open account due and unpaid for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the libellant has been unable to trace to the vessels, and for which it has no security."

3. Because the statement made on page 2 of said decree and elsewhere that it is unable to trace 891.8 tons of coal delivered at Promised Land and that the same is "left unaccounted for," whereas the said coal can be traced and is accounted for as being used by the claimants' plant at said place as appears in the opinion of this court in said cause filed January 29, 1917.

By their Proctors,

GARDNER PIRCE & THORNLEY.

139 District Court of the United States, District of Rhode Island.

Adm. 1335, 1333, 1334, 1327, 1329.

Now Consolidated in Adm. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

THE FISHING STEAMERS WILLIAM B. MURRAY, ROLLIN E. MASON, Herbert N. Edwards, Martin J. Marran, Amagansett, Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, Their Engines, Boats, etc.

Opinion of Court.

July 10, 1917.

(Filed in Consolidated Cause #1359.)

BROWN, J.:

Upon hearing for the settlement of a decree the question arises whether the sum of \$2,000, should be applied in reduction of the maritime liens.

In the opinion filed January 29, 1917, it was said that

"This payment should be applied to the open account rather than to the notes not due at the time of payment."

The libellant now shows that the open account on August 24, 1914, the date of payment of the sum of \$2,000., exceeding the maritime liens on the vessels now libelled, and possibly liens on other vessels not libelled, by the amount of \$5,529.32. This was unsecured and was due, whereas the notes referred to in the opinion were for coal previously furnished, and were not due. Under these circumstances I am of the opinion that the libellant, under the ordinary rule, had the right to apply the payment to the unsecured open account; and as after this application there still remains a balance of \$3,529.32 on open account not secured by maritime liens or otherwise, this application does not have the effect of reducing the amount of the maritime liens for coal furnished to these vessels.

Final Decree.

(Filed in Consolidated Cause No. 1359—July 10, 1917.)

This cause having been consolidated with the Admiralty causes against the fishing steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett, No. 1329, and Rollin E. Mason, No. 1333, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

141 It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land, 4,459 tons, value of . .	\$14,625.52
1 cargo coal at Tiverton, R. I., 861 tons, value of . .	3,228.75
Total	5,320 tons, value of . . \$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned in the consolidated Libels,

	tons	value
From Promised Land 2,778, less 20%	2,222.4 @ 3.28	\$7,289.48
To all steamers mentioned in the consolidated Libels,		
From Tiverton.....	626.5 @ 3.75	\$2,349.38
	<u>2,848.9 tons</u>	<u>\$9,638.86</u>

To the following vessels not yet libelled:

From Promised Land—		
Str. Portland	148	
Str. Strong	157	
Str. Sanford	3	
Str. East Hampton	482 790, less 20%	632. @ 3.28 \$2,072.96
From Tiverton—		
Str. East Hampton	125.25	
Str. Strong	18.25	
Str. Sanford	13.	
Str. Adroit	7.	163.5 @ 3.75 \$613.13
	<u>795.5</u>	<u>\$2,686.09</u>

142	That there was used by the factory at Promised Land	
	891, less 20%	712.8 @ 3.28..... \$2,337.96
	By the factory at Tiverton	71. @ 3.75..... 266.25

This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it	
891.8	@ 3.28.. 2,925.10 \$5,529.38
Total cargoes, 5,320 tons, value.....	\$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to..... 4,459 tons

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to..... 1,068 tons

Total 5,527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered adjudged and Decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and which had been paid for at the time that the respective vessels re

ceived all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at

143 Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars (\$5,529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore Ordered, Adjudged and Decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2,000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

And it is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Walter Adams, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

79.2 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$259.78
and also 22.25 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	83.44

or the total sum of	<u>\$343.22</u>
---------------------------	-----------------

and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$343.22, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of...	60.07
--	-------

or a total amount of	<u>\$403.29</u>
----------------------------	-----------------

144 It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Alaska, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

243.2 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$797.70
and also 113.25 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	424.69

or the total sum of	<u>\$1,222.39</u>
---------------------------	-------------------

and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1,222.-39, together with interest thereon, from August 1, 1914, to July 1, 1917, amounting to the further sum of

213.9

or a total amount of..... \$1,436.3

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Arizona, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

28 tons of coal, at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....

\$91.8

and that said libellant is justly entitled to have and recover from said fishing steamer said sum of \$643.-31, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of..

16.0

or a total amount of..... \$107.9

145 It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer George Curtis after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

154.4 tons of coal at Promised Land, Long Island, and of the value of \$3.28 per ton, amounting to.....

\$506.4

also 36.5 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....

136.8

or the total sum of..... \$643.3

and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$643.-31, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of

112.5

or the total amount of..... \$755.8

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Montauk, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

96.8 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton amounting to.....

\$317.5

and also 56.5 tons of coal at Tiverton, R. I., of the value
of \$3.75 per ton, amounting to..... 211.88

or the total sum of..... \$529.38

and that said Libellant is justly entitled to have and
recover from said fishing steamer said sum of
146 \$529.38, together with interest thereon from
August 1, 1914, to July 1, 1917, amounting to
the further sum of 92.64

or the total amount of..... \$622.02

It is further Ordered, Adjudged and Decreed by the Court that
the Libellant, the Piedmont & Georges Creek Coal Company, did
provide and furnish to the fishing steamer Quickstep, after all credits
have been given and deductions made in accordance with the Opin-
ion heretofore filed in this case——

15.2 tons of coal at Promised Land, Long Island, of the
value of \$3.28 per ton, amounting to..... \$49.86

and that said Libellant is justly entitled to have and
recover from said fishing steamer said sum of \$49.-
86, together with interest thereon from August
1, 1914, to July 1, 1917, amounting to the further
sum of 8.73

or the total amount of..... \$58.59

It is further Ordered, Adjudged and Decreed by the Court that
the Libellant, the Piedmont & Georges Creek Coal Company, did
provide and furnish to the fishing steamer Ranger, after all credits
have been given and deductions made in accordance with the Opin-
ion heretofore filed in this case——

202.4 tons of coal at Promised Land, Long Island, of the \$663.87
value of \$3.28 per ton, amounting to \$663.87

and 84.5 tons of coal at Tiverton, R. I., of the value
of \$3.75 per ton, amounting to..... 316.88

or the total sum of \$980.75

147 and that said Libellant is justly entitled to have
and recover from said fishing steamer said sum
of \$980.75, together with interest thereon from Aug-
ust 1, 1914, to April 1, 1917, amounting to the
further sum of..... 171.63

or the total amount of..... \$1,152.38

The total amount due from all of said steamers amount-
ing to \$4,536.39
together with costs as taxed, amounting to the sum of. 131.35

Total \$4,667.74

and it further appearing that said fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger were released in this cause upon the filing of a bond in the sum of Nineteen Thousand Dollars by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company of Missouri, as obligors: It is further Ordered, Adjudged and Decreed that the Libellant recover against the said Claimant and its surety said sums as aforesaid of principal, interest and costs, together making the sum of Forty-six Hundred and sixty-seven and 74/100 Dollars (\$4,667.74), hereinbefore decreed against the said fishing steamers, respectively; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further Ordered Adjudged and Decreed that unless an appeal be taken from this decree on or before August 1, 1917,
 148 the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered July 10, 1917.

ARTHUR L. BROWN, J.

Entered as Decree of Court this 10 day of July. — A. D., 1917
 THOMAS HOPE.

*Libellant's Motion to Reopen Case for the Introduction of
 Further Testimony.*

(Filed in Consolidated Cause #1359—September 29, 1917.)

Respectfully represents the Libellant in the above entitled case that it has just come to its knowledge that there has been a mistake or misunderstanding in relation to the amount of coal that was used by each of the steamers coaling at Promised Land, as shown by the testimony and stipulations on file in this case, in this:

That counsel, and it is believed the Court labored under the impression that the amount of coal testified to as having been the amount of coal that was used by these steamers from Promised Land, was the entire amount of coal which could be accounted for against all the steamers coaling at Promised Land, not only from the 1,068 tons which was on hand in steamer pockets, but the 4,459 tons in addition, whereas in truth and in fact, the steamers coaling at Promised Land had been credited with 1,068 tons of coal prior to any charge being made against them for any coal contained in these four cargoes, and that the amount of coal testified to in Court

as having been used by the steamers respectively, was actually
 149 the amount of coal used by the steamers after 1,068 tons used by them had been proportionately deducted from their total coal consumption, and consequently that the decision of the Court to deduct from the figures 20% of the amount of coal used by them, respectively, because there were 1,068 tons on hand when they began to use coal from these four cargoes, is a mistake and an error, since said amount of 1,068 tons had already been deducted from their consumption.

Wherefore, Libellant moves that said case may be reopened for the production, if necessary, of testimony disclosing the above facts, and that the opinion and decree herein may be corrected and reformed, and that all other matters stand until further order of the Court.

By its Proctor, FRANK HEALY.

I, Frank Healy, proctor for the libellant, do hereby certify that the facts and statements of the foregoing motion are true to the best of my knowledge, information and belief and that the facts disclosed therein have only recently come to the knowledge of the libellant and this motion is not filed for delay.

(Signed)

FRANK HEALY.

Subscribed and sworn to before me this 19th day of September, A. D. 1917.

THOMAS CURRAN.

150 *Petition for Subpoena Duces Tecum Filed by Libellant.*

(Filed in Consolidated Cause #1359—Oct. 12, 1917.)

Respectfully Represents your petitioner that there is now on file a motion to reopen said cases for the reasons and causes stated therein.

That it is necessary to produce in support of said motion the testimony of C. R. Horton, Esquire, of Amagansett, Long Island, with the books and papers showing the distribution of the coal to the steamers in question from the cargoes in question, as set forth in said petition.

That said C. R. Horton resides without the District of Rhode Island but within one hundred miles.

Therefore your petitioner respectfully prays that a subpoena duces tecum will be ordered directed to the C. R. Horton to be and appear before this court on the 19th day of October, A. D., 1917 and have there with him all the books and records showing the distribution of the four cargoes of coal from the said vessel mentioned to the fishing steamers of the Atlantic Phosphate & Oil Corporation now on file in this case.

(Signed)

PIEDMONT & GEORGES CREEK
COAL CO.

By its Proctor, FRANK HEALY.

Subpoena duces tecum issued and returnable October 19, 1917.

(Signed)

ARTHUR L. BROWN,

October 12, 1917.

151 *Subpoena Duces Tecum.*

(Filed in Consolidated Cause #1359.)

The President of the United States of America to C. R. Horton,
Amagansett, Long Island, N. Y.

We command that laying aside all manner of business whatsoever

you personally appear before our said court to be holden at Rhode Island at ten o'clock in the forenoon, then and there to testify all and singular those matters and things which you shall know in a certain action in the said court and undetermined between the Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams et al Admir. 1359 and that you have with you books, records and documents containing the record of the distribution of coal from Promised Land to the fishing steamers belonging to the Atlantic Phosphate & Oil Company during the season of 1914 from the four cargoes at Promised Land under bills of lading dated respectively May 19, 1914 nine hundred and eleven tons, May 23, 1914 nine hundred and twenty-three, June 9, 1914 nine hundred seventeen tons, and July 3, 1914 fourteen hundred and twenty-nine tons.

Hereof fail not, as you will answer to said court under the penalty of court provided.

Witness: Arthur L. Brown Judge, this 12th day of October, 1917.

THOMAS HOPE,

Clerk.

152 *Officer's Return as to Service of Subpoena Duces Tecum.*

(Filed in Consolidated Cause #1359.)

STATE OF NEW YORK,

County of New York, ss:

Henry W. Nichols being duly sworn says:

That on the 18th day of October, 1917 he served the annexed subpoena duces tecum personally on Charles R. Horton, the person therein named as witness at the Seaboard Fisheries Company, Inc., docks at Long Island therewith explaining to him the said subpoena duces tecum and delivering to him a copy thereof.

(Signed)

HENRY W. NICHOLS.

Sworn to before me this — day of October, A. D., 1917.

(Signed)

ALICE E. BRENNAN.

New York County 493,

New York Register No.

[SEAL.]

Expenses.

Transportation New York to Promised Land railroad and automobile	\$13.50
Misc.	2.00
Service	2.00
	<hr/>
	\$17.50

Testimony.

Testimony in Support of the Motion filed by the libellant to Reopen the Case on account of error and mistake. (Testimony taken on Oct. 19, 1917 in Consolidated Cause # 1359.)

Before Arthur L. Brown, Judge.

Appearances:

For the Libellant, Frank Healy, Esq.

For the Respondent, Gardner, Pirce & Thornley: Charles R. Haslam, Esq.

It is stipulated by and between counsel that the testimony given in this case may be used with like effect, as if given in each of the cases, against the Steamers—Edwards, Mason, Marran, Amagansett and Murray.

CHARLES R. HORTON is called in support of the motion and, having been duly sworn, testifies as follows:

Mr. Haslam: Before any testimony is taken I wish to have it appear on the record that I object to the reopening of this case at this time, your Honor.

By the Court: This is only in support of the motion I understand.

Mr. Healy: That is all. It is not reopened unless your Honor shall see fit to reopen it after—

Mr. Haslam: It is simply a motion to reopen, that is—

154 Mr. Healy: Yes, that is all. I understood your Honor would not reopen on the affidavit given by me on information and belief.

Mr. Haslam: I understood, also your Honor, that after he has offered evidence in support of this motion to reopen the case, your Honor would be affected by the documentary evidence?

By the Court: Yes.

Mr. Haslam: And in your testimony by Mr. Horton, any explanation or changing his former testimony in the case—

Mr. Healy: I don't want to go as far as that. The documentary evidence is to support Mr. Horton.

By the Court: You may proceed.

Mr. Haslam: That is what I understood.

By the Court: You may proceed in support of the motion.

Direct examination by Mr. Healy:

Q. 1. Mr. Horton, what position did you hold at the time of the failure of the—at the time the Atlantic Phosphate & Oil Corporation went into the hands of a Receiver?

Ans. Bookkeeper and cashier.

Q. 2. Bookkeeper and cashier, where?

Ans. Promised Land, Long Island.

Q. 3. As bookkeeper and cashier did you have charge of the books in relation to the coal that was distributed to the Steamers at Promised Land.

89

Ans. I did.

Q. 4. Have you got them here with you showing, the distribution of coal that was made to the Steamers at Promised Land during that season?

Ans. I have.

155 Q. 5. Were you employed by the receivers at Promised Land after the failure?

Ans. I was.

Q. 6. Did you, while employed at Promised Land, make a statement for the receivers in relation to the distribution of coal to those Steamers from four cargoes furnished by the George's Creek Coal Company?

Mr. Haslam: I object, I don't see that this has——

By the Court: That is only preliminary.

Mr. Haslam: It is not material for the——

Mr. Healy: I am not going to show the value; I simply want to show where the coal went.

Mr. Haslam: My point is this, it seems to me it should be shown on the books kept by this man, not by a letter which he may have sent, on request by the receivers after the failure took place.

By the Court: This is to reopen the previous case, as I understand.

Mr. Haslam: This refers, your Honor, to another matter. This paper was offered, or suggested——

Mr. Healy: Never was offered, never suggested——

Mr. Haslam: Which was referred to——

Mr. Healy: Never was referred to.

Mr. Haslam: Then I am misinformed.

Mr. Healy: You are misinformed.

By the Court: This is all on the motion, that is all. Proceed.

Ans. I did.

(By Mr. Healy:)

Q. 7. Was that statement, prepared from the books, showing the distribution of coal to these Steamers?

Ans. It was.

156 Q. 8. Are those books, from which you prepared that statement, here—here in court now?

Ans. They are.

Q. 9. Will you produce them?

Ans. (Witness complies with request of counsel.)

Q. 10. Mr. Horton, you also testified in this case at the hearing?

Ans. I did.

Q. 11. And did you, or not, give the same testimony at the hearing that you gave to the receivers as to the amount of coal that was used on these four cargoes?

Ans. I did.

Q. 12. Referring to your testimony on page 62 of the record in which you testified, in answer to a question by Mr. Woolsey:

"What have you got there—referring to the Steamer Herbert N. Edwards?"

"Herbert N. Edwards—424 tons."

Will you examine your records and tell the Court what you meant, as shown by your records, by "424 tons"?

Ans. I meant that the 424 tons was the amount of coal chargeable to the four cargoes in question, to the Steamer Herbert N. Edwards.

Q. 13. In the testimony which you gave in court you testified also that, at the time the first cargo of coal, of these four cargoes, came to Promised Land there was on hand, of steamer coal, 1,068 tons: Do you remember that?

Ans. I don't remember that I testified that. That is a fact.

Q. 14. Does the records show that 1,068 tons of coal was there at that time?

Ans. Yes, sir.

Q. 15. And that the first of the cargoes of coal was mixed with that 1,068 tons?

157 Ans. Yes, sir.

Q. 16. Were you asked, at any time in that hearing, whether or not any deduction whatever had been—was made of that 1,068 tons by you?

Mr. Haslam: I object. We have the record. Just what is shown, I think—

Mr. Healy: All right, strike it out.

Mr. Haslam: I understood your Honor to say that this man was to testify from the books. Now he is not testifying from his books. The testimony he just gave was from a paper, not from his books.

(By Mr. Healy:)

Q. 17. The memorandum or paper that you have got there—is it taken right from the books that are on your knee?

Ans. They are.

Q. 18. Did you arrive at the amount of 421 tons for the Steamer Herbert N. Edwards as the amount that was used out of the four cargoes after you had taken into account as given by the books in your lap the fact that there was 1,068 tons of steamer coal there before you began to compute?

Ans. I did.

Mr. Haslam: I would like to know just what the witness is basing his testimony on. I would like, Mr. Healy, this man to take the books of original record, and have this man point out just where it is shown on this book that they have made any allowance for that 1,068 tons.

Mr. Healy: All right, I will do that.

Q. 19. Will you turn over to your books?

Ans. (Witness complies with the request of counsel.)

158 Q. 20. Will you take the Steamer Herbert N. Edwards—the coal that was shown to be used by the Steamer Herbert N. Edwards?

By the Court: Let me see how the accounts are kept.
(The Court and witness look over the accounts.)

(By Mr. Healy:)

Q. 21. Now, have you got the original record there of the distribution of coal, or the consumption of coal by the Steamer Herbert N. Edwards?

Ans. I have.

Q. 2. Taken during the month of June: What was the amount of coal that was consumed, or taken from the coal pile by the Steamer Herbert N. Edwards?

Ans. 181 89/100.

Q. 23. Did you, in making up the statement of 424 tons, allow in that statement that amount that you have just stated, or did you make any deduction from it?

Ans. I did not.

Q. 24. How much did you allow?

Ans. I allowed the proportionate amount that was used in June against all the steamers to make up for the cargo that was on the dock at the time—the first cargo that was on the dock—1,068 tons.

Q. 25. That is, out of the consumption of coal by the Steamer Edwards in the month of June, you took that proportionate amount of the 1,068 tons—out of the consumption of coal by that vessel?

Ans. I do.

Q. 26. How much did it amount to?

Ans. 104 tons.

Q. 27. So that to make the statement, for the receivers, of the consumption of coal by the Steamer Herbert N. Edwards, as
159 424 tons—her total consumption would have been 104 tons more, would it not?

Ans. It would.

Mr. Haslam: Just a moment: 104 tons more than 181—

Ans. 104 tons more than 424 tons—of the first cargo out of the dock, which he took.

(By Mr. Healy:)

Q. 28. Take the Steamer Adams: What was the consumption of the Steamer Adams during the month of June?

Mr. Haslam: Why not get through with the Edwards, first—follow that out.

Mr. Healy: I have finished the Edwards—(To Witness:)

Q. 29. What was the total consumption of coal they have got—after you added in what was in the bin?

Ans. The total amount of coal against the Edwards, after deducting the 104 tons, 424 tons.

Q. 30. Was that the figure that you testified to in court?

Ans. It was.

Mr. Healy: Now that covers the entire consumption of coal on the Edwards.

Mr. Haslam: No, he has not shown, from his books yet, what was used by the Edwards.

By the Court: Show first how much coal was charged against the Edwards.

Mr. Healy: He has not done it in the way you suggest but he has done it in this way: He is supposed to have kept account of all the coal that was used by the different vessels.

160 The Witness: Yes.

By the Court: Then did he make a report subsequently for the receivers?

Mr. Healy: Yes.

Q. 31. Now, then, what is the consumption of coal by the Steamer Edwards, during that month, of the five cargoes of coal?

By the Court: As appears on your books.

Mr. Healy: —as appears on your books—all the coal that was used from those five cargoes—

By the Court: Not five cargoes—four cargoes.

Mr. Healy: —by the Edwards?

Ans. 181 89/100 tons.

Q. 32. Can't you give me the total?

Ans. Up until the first of September 487½ tons; and then in September, I took the proportionate amount of coal that was used in September up to 262 tons, that was still on hand the first day of September.

Q. 33. And in making this proportion what did you make the total amount of coal that was used from those five cargoes?

Ans. I don't understand you, Mr. Healy.

Q. 34. What did it make the total consumption of coal from those five cargoes by the Edwards?

By the Court: That is not five cargoes; that is four cargoes and—

Mr. Healy: —1,068 tons and the four cargoes in question.

Ans. 528 tons.

161 Q. 35. Now, what did you deduct from that 528 tons on account of the 1,068 tons that were in the bins when the steamer coal began to come there from these four cargoes?

Ans. 104 tons.

Q. 36. And when was the 104 tons deducted from the total consumption of coal?

Ans. During the month of June.

Mr. Healy: Does that cover what you want, Mr. Haslam?

By the Court: What did you make your deduction on—you didn't make it on the books?

Ans. I had 1,068 tons of coal, your Honor that had landed first, and you have 1,068 tons which was charged out—we call that the first cargo of coal. The receivers wrote me to give them a list of the

coal where it was used from these four cargoes, and I deducted 1,068 tons out and sent them a list, with the first, of how the amount—to make up these four barge loads, to figure out where it was used, taking into consideration the 1,068 tons had already been charged out.

By the Court: How did you happen to do that—take out 1,068 tons?

Ans. Why, the day I was asked to give an account of the four cargoes—the only correct way to do it would be to take the coal that was on the dock before that was landed. I made a proportion, the same as if you had \$100 in the bank, and afterwards deposited \$500 more, you would make a consideration the first \$100 you withdrew was out of the first \$100 you put in the bank.

By the Court: Go on, Mr. Healy.

162 (By Mr. Healy:)

Q. 37. So much for the Edwards. Now take the Steamer Adams: What was the entire consumption of coal by the Steamer Adams from these five cargoes—

By the Court: Do not say “five cargoes”—“four cargoes” and—

(By Mr. Healy:)

Q. 37. —of four cargoes and 1,068 tons of coal—the four cargoes and the 1,068 tons of coal, what was the total amount?

Ans. 127 tons.

Q. 38. Now, in the testimony that you gave to the receivers, or the information you gave the receivers, was any deduction made from that 127 on account of this 1,068 tons?

Ans. There was.

Q. 39. How much was deducted?

Ans. 28 tons.

Q. 40. Was that the proportion of the 1,068 tons which the consumption of the Adams bore to all of the coal?

Ans. It was.

Q. 41. Now, will you take the Alaska? What was her consumption of coal from the four cargoes and 1,068 tons that was there?

Ans. 398 tons.

Q. 42. Did you take anything from that 398 tons on account of the fact that there was 1,068 tons on the dock.

Ans. I did.

Q. 43. How much did you take out?

Ans. 94 tons.

Q. 44. The Amagansett: What was her total consumption of coal from the four cargoes and 1,068 tons?

Ans. 625 tons.

163 Q. 45. What did you deduct on account of the 1,068 tons that was there on the dock?

Ans. 133 tons.

Q. 46. The Arizona: What was her total consumption of coal from the four cargoes and 1,068 tons?

Ans. 54 tons.

Q. 47. And what did you deduct on account of the 1,068 tons that was there on the dock?

Ans. 19 tons.

Q. 48. The Curtiss?

Ans. 236 tons.

Q. 49. What did you deduct?

Ans. 43 tons.

Q. 50. Which left, how much?

Ans. 193 tons.

Q. 51. The East Hampton?

Ans. 646 tons.

Q. 52. What did you deduct from her on account of the amount of coal on the dock?

Ans. 164 tons.

Q. 53. Leaving the amount chargeable to the East Hampton, from the four cargoes and the 1,068 tons, how much?

Mr. Haslam: Is the East Hampton connected with this libel?

Mr. Healy: No; that makes no difference.

By the Court: He is showing where this coal went to.

Ans. 482 tons.

Q. 54. The Herbert N. Edwards?

Ans. 528 tons.

Q. 56. What did you deduct from that?

Ans. 104 tons.

164 Q. 57. Leaving the amount supplied from these four cargoes?

Ans. 424 tons.

Q. 58. The Marran?

Ans. 318 tons.

Q. 59. And on account of the coal that was already on the dock, what did you deduct from that amount?

Ans. 67 tons.

Q. 60. That left chargeable to the four cargoes?

Ans. 251 tons.

Q. 61. And the Montauk—or Mason, rather?

Ans. 399 tons.

Q. 62. What was deducted on account of the coal that was already on the dock?

Ans. 100 tons.

Q. 63. Leaving the amount furnished from these four cargoes?

Ans. 299 tons.

Q. 64. Montauk?

Ans. 149 tons.

Q. 65. What did you deduct on account of the 1,068 tons?

Ans. 28 tons.

Q. 66. Leaving the amount chargeable to the four cargoes?

Ans. 121 tons.

Q. 67. The Murray?

Ans. 410 tons.

Q. 68. And deducted on account of the 1,068 tons?

Ans. 122 tons.

Q. 69. Leaving the amount furnished from the four cargoes?

Ans. 288 tons.

Q. 70. Portland?

Ans. 189 tons.

165 Q. 71. And deducted on account of the 1,068 tons of coal on the dock?

Ans. 36 tons.

Q. 72. And furnished from the four cargoes?

Ans. 148 tons.

Q. 73. The Quickstep?

Ans. 45 tons.

Q. 74. And deducted on account of the 1,068 on the dock?

Ans. 26.

Q. 75. Leaving——

Ans. 19 tons.

Q. 76. Ranger?

Ans. 312 tons.

Q. 77. Deducted on account of the coal on the dock?

Ans. 59 tons.

Q. 78. How much was left on the Ranger?

Ans. 253 tons.

Q. 79. Now, on the Strong?

Ans. 202 tons.

Q. 80. What was deducted on account of the coal on the dock?

Ans. 45 tons.

Q. 81. And that furnished to the Strong—from four cargoes?

Ans. 157 tons.

Q. 82. Now, are these figures you have given taken from the books, computed right from your books?

Ans. They are.

Q. 83. Are these figures that you have given now, as to the consumption of coal, from these four cargoes, the same figures that were given at the time of the trial?

Ans. They are.

Q. 84. In other words, I now understand that from the first coal that was consumed during the month of June by these steamers from that pile of coal which consisted of 1,068 tons that was on the dock and other coal from some of these four cargoes, you first deducted, before giving any credit to the steamers from these cargoes of coal in question, 1,068 proportionately?

Ans. I did.

By the Court: Proportionate to what?

Ans. Proportionate to the total amount of coal used in June.

By the Court: Just tell me how you figured it—you took what the vessels discharged?

Ans. I took all the vessels discharged and added the amount of coal that they had for the month, the number of tons—if I remember rightly it was 1,846 so, take the Adams, for example, which showed 51 tons—I would take 51/1,846 as the total amount of coal.

(By the Court:)

Q. 85. I do not follow you: You first calculated how much coal all of the vessels had received?

Ans. During the month of June and after——

Q. 86. Had they taken enough to exhaust the pile?

Ans. Yes—No, not to exhaust the pile.

Q. 87. Now you made a proportionate calculation: What was the other part of the proportion?

Ans. The other portion was the 1,068 tons, and the balance would bring what was on the dock with the other cargoes. On the Adams, take 51 tons—they took 51/1,846.

Q. 88. Where did you get the 1,846?

Ans. That was the total amount of coal taken from all the Steamers. On the Adams, take 51 tons—you take 51/1,846/1,086—that will give you the amount charged out of the 1,086 to the Adams.

167 Q. 89. When did you first make that computation?

Ans. I first made that computation for Mr. Cox.

Q. 90. Have you got the figures showing that calculation?

Ans. I have not; I worked it out.

Q. 91. Did you put anything on the books at the same time you made them?

Ans. I did not.

Q. 92. How does it appear on the books now? How can anybody else make it out from the books?

Ans. Well, anybody you had to keep the books would have to work it out on a proportionate basis. If they want to find out, the books will show the quantity of coal that was landed. They would have to work it out on a proportionate basis.

Q. 93. This was all deducted——

Ans. They took the coal—this cargo is 1,068 tons so——

By the Court: Let me see the decree there.

Mr. Healy: The opinion takes it out again. It is clear we all labored under the belief that it had not been deducted.

By the Court: I was informed by counsel it was the case; it represents the facts as agreed upon by counsel. There was no suggestion by any one that the facts are not correct.

Mr. Healy: There is no question but what we all believe it was correct up to less than two months ago—that the vessels from the cargoes delivered to Promised Land received 3,568 tons.

By the Court: You say that is incorrect?

Mr. Healy: Yes, certainly it is. It is not incorrect in this aspect, your Honor, it is not incorrect if you say that this was from
168 the first cargoes—it is exactly right; but if you say it was all that these vessels received from the four cargoes and the 1,068 tons of coal already there it is 1,068 tons out of the way because that amount is already taken out. That is just the mistake that we all labored under.

By the Court: I did not labor under any mistake. I took the figures you gave me as the only basis, and only passed on what was in the testimony.

Mr. Healy: I believe that, when the testimony went in here, that it was the total consumption of coal.

By the Court: 3,568 tons was taken by——

Mr. Healy: But 1,068 tons had been paid for.

By the Court: "The entire amount of coal was 4,459 tons of lien coal so called and 1,068 tons of non-lien coal, a total of 5,527. You make a larger total then, do you?"

Mr. Healy: Why, it is 1,068 tons more because 3,568 tons is coal that was exactly used out of the four cargoes, and your Honor is taking from us 20 per cent of that when it has already been taken out. Now I didn't know it, Mr. Thornley didn't, Mr. Haslam didn't know it—none of us knew it.

By the Court: Now you come in here with the idea that he made a proportionate reduction on this entire amount. I want to know what evidence there is on the books that he did it.

Mr. Healy: It wasn't a matter that would go on the books at all. It was a computation that should have been made from the books, and was made and got from him by the receivers, from the books.

169 but the total consumption of coal is on his books, and how he arrived at the figures—what he testified to in court was a computation that was made several years ago, and a letter to the receivers is here that shows he was honest about it.

By the Court: There is another feature: All the 1,068 tons of coal—you have deducted that from the amount which went to the vessels——

Mr. Healy: The fact in relation to that—that it was soft coal, or anything that would mix, could not be taken out—1,068 tons of coal, in specie, could not be taken out, but it was identically the same coal, and it was held by your Honor, in his opinion, that we could not tell which of that 1,068 tons went to one or to another, so that we should take out 20 per cent on the assumption that that bore that relation to the total amount of coal furnished by us. Now Mr. Horton took exactly the same assumption.

By the Court: Now, did he?

Mr. Healy: Yes.

By the Court: You make the deduction now of 1,068 tons of coal that went to vessels, you diminish the amount of total consumption by the vessels by 1,068 tons?

Mr. Healy: Yes, your Honor.

By the Court: Now here is 1,068 tons much of which should have gone to the factory.

Mr. Healy: No; he can account for the factory.

The Witness: Now, Judge, I would like to set myself square with you on that: When I was in court before I wasn't asked the question how the distribution of the total amount of coal was made—but the distribution of those four cargoes, which I gave. I wasn't allowed to testify to anything else. It was objected to, I believe ruled
170 out. Now the 1,068 tons of coal from previous cargoes—at the time we had 1,068 tons at that time. The fact we had 979 tons in the factory bin the previous cargo, previous to 1,068 tons from the factory bin—used 1,068.

(By the Court:)

Q. 94. You had another bin for that?

Ans. Three bins—two for the steamers, one for the factory. The steamers never took coal from the factory bin.

By the Court: Any other questions, Mr. Healy?

(By Mr. Healy:)

Q. 95. Mr. Horton, after the amount that is charged on your books to these various steamers, did they use the entire amount of coal from the four cargoes and the 1,068 tons, or did the factory get some of that four cargoes and these 1,068 tons too?

Ans. The factory didn't get any of the 1,068 tons. The factory got some of the four cargoes.

Q. 96. How much?

Ans. 891 tons.

Q. 97. Now, that is, after taking out for the steamers and for the concern the 1,068 tons which they had in the bins from the coal that was consumed by the Steamers, and then giving the figures that you have for the consumption by the Steamers, as testified to there was, how many tons left?

Ans. 891.

Q. 98. Where did that go?

Ans. Went to the factory.

Q. 99. Was there anywhere else for it to go?

Ans. No, sir.

Mr. Healy: The fact that that 1,068 tons had been deducted from the consumption of these Steamers,—I want to state to the
171 Court, about these figures that were testified to in court, that it is absolutely brand new to me and I know it is to the other side—I am just as satisfied of it as I am of anything—that we labored under a mistake that that was the entire consumption of the Steamers from this pile. We want a lien for the coal that it is testified to has been used from these four cargoes, by this man.

By the Court: Are these books in use?

Ans. I believe they are all in use. They have been sold.

(By the Court:)

Q. 100. Who owns them?

Ans. I don't know who owns them.

Q. 101. How did you get at them? Were they obtained under a subpoena duces tecum?

Ans. Oh the books—I thought you said boats—we have the books. I have them under subpoena.

Q. 102. They are not in use?

Ans. Not in use because the factory is not running at the present time. They have been in use right along.

By the Court: Any reason why they should not be left here so that counsel may examine them?

Mr. Healy: No, I had to go into the other camp to get my witness. He works for their client.

By the Court: Have you finished with him?

Mr. Healy: I have, your Honor.

Cross-examination by Mr. Haslam:

C. Q. 103. I understand you to say, Mr. Horton that on your books, the two books which you have on your lap, there is nothing to show this computation of which you have testified?

Ans. No, not the working out of the proportions.

172 C. Q. 104. How long after you made the entries in these books did you work out this proportionate deduction?

Ans. The entries was made June, July, August and September, 1914, and the proportion and the deduction was made on February 1, 1915, at a request from Mr. Cox, the Receiver.

C. Q. 105. Now, I understand you to say the books show the gross amount of coal used during June, July and August, out of the four cargoes plus the 1,068 tons?

Ans. Yes.

C. Q. 106. The 1,068 tons was a previous cargo, wasn't it?

Ans. Yes, sir.

C. Q. 107. Now, any way the 1,068 tons was in two bins at the time?

Ans. The 1,068 tons was in one bin.

C. Q. 108. And when the first of these four cargoes arrived where was the coal placed with reference to the 1,068 tons?

Ans. Well, I couldn't tell you; I couldn't swear exactly to that. I should say when the first cargo arrived that it was placed in the empty bin.

C. Q. 109. The next cargo: Where was that placed?

Ans. On the top of the 1,068 tons.

C. Q. 110. Now during—when did these four cargoes arrive, do you remember?

Ans. Arrived the last part of May and the first part of June; the last one, about the middle of July.

C. Q. 111. Two arrived in May and one in July and one in June?

Ans. I can tell you exactly, Mr. Haslam, if you look for—

C. Q. 112. Can't you tell that from the receipt book?

Ans. From the date of the voucher—the voucher would be the record: 911 tons arrived on May 29.

Mr. Healy: Tell right there when it was discharged.

173 Ans. Finished discharging on June 8th.

922 on the barge Crystal, finished discharging that on June 2d.

1,187 from the barge Rhode Island—I have not got the discharge figures on that, but it arrived on the 11th of June.

I have not got the discharge figures—1,429, but that arrived on July 11th.

(By Mr. Haslam:)

C. Q. 113. Do your books show whether or not the 1,068 tons were used during June or July?

Ans. Not in regard to any use. You can identify where that 1,068 tons went. I am going on the supposition that the 1,068 tons that was charged out was the 1,068 tons.

C. Q. 114. That is, you are not testifying that it is the fact, that the 1,068 tons was actually used in the month of June?

Ans. Not of that particular coal; there may have—some of the 1,068 may have been used in September. You could not identify by the month altogether.

C. Q. 115. Is it not possible that some of the 1,068 tons lasted into September when coal from other barges was bought and delivered there?

Ans. No; it was all used up before any other coal was bought from other parties.

C. Q. 116. All the coal in that bin used up?

Ans. It was.

C. Q. 117. Now, you made a computation, Mr. Horton, with reference to the Adams: I understood you to say that was—the proportion was 51/1,846 of 1,068: Did you compute that as to what that amounted to?

Ans. I made an exact computation, roughly, in your office this morning. That is the way I remember it. That was the proportionate part, as I remember it, in your office this morning.

174 C. Q. 118. You haven't got the computation there, have you, Mr. Horton?

Ans. No; it is on a paper on your desk.

C. Q. 119. How did you get the 51 tons?

Ans. The 51 tons was the total coal they had in the month of June.

C. Q. 120. And then there was 1,846, the total used by all the vessels during the month of June?

Ans. I believe that was the total.

C. Q. 121. When you say "all the vessels" you include other vessels and the vessels—those that are libelled in this case?

Ans. If I understand, the Portland was not libelled, or the East Hampton, or the Strong.

C. Q. 122. Assuming that the East Hampton, the Portland and the Strong were not libelled, and were not involved in this case, I will ask you if those three vessels used any coal during June?

Ans. Oh, yes, they are included in the total.

C. Q. 123. And in the month of June, how much did the East Hampton use?

Ans. 288 76/100 tons.

C. Q. 124. How much did the Strong use?

Ans. 79 36/100 tons.

C. Q. 125. And the Portland?

Ans. 63 81/100 tons.

C. Q. 126. You said June, did you not?

Ans. June, yes.

C. Q. 127. These computations that you made, Mr. Horton, were they rough computations, or were they exact?

Ans. They were exact—

C. Q. 128. As I figured out on the basis of the figures given to me by you, of the Adams, I find that deduction should have been 29½, whereas you have 28.

175 Ans. Now, I said exact—I threw the decimal or fraction point off.

C. Q. 129. Then, of the Adams, there may have been a difference of 1½ tons?

Ans. A difference of 1½ tons, something like that.

C. Q. 130. With reference to the other vessels did you estimate it in the same way?

Ans. Yes.

C. Q. 131. Since you estimated those roughly, Mr. Horton, how is it that they all total up 1,068 tons?

Ans. Well, it would not make any difference what proportion—any proportion would do, any kind of proportion would do.

C. Q. 132. That is, assuming that all the vessels are libelled: If three vessels out of the fifteen were not involved in this case it would make some difference, would it not?

Ans. It would. I know nothing about what vessels was libelled. Mr. Cox asked me to make out a list of how this coal was used. I made it out as near as possible.

Mr. Healy: The coal that went to the East Hampton, we haven't reached; the coal that went to the Portland, we haven't reached; the coal that went to Strong we haven't reached—but they used it. What difference does it make in this case, as long as you get 1,068 tons out it makes absolutely no difference whether it is put to one and thrown off another.

Mr. Haslam: It makes some difference how that 1,068 tons was disposed of.

Mr. Healy: You add up those deductions, you will find where it went.

By the Court: In this figure it is all taken out of those vessels.

176 Mr. Haslam: There was no distinction made between the vessels libelled and the vessels that were not libelled.

C. Q. 133. When, Mr. Horton, did you make the computation showing the distribution of the cargo of 1,068 tons?

Ans. I made it some time in February 1915.

C. Q. 134. You didn't report, did you, to the Receiver?

Ans. I did.

C. Q. 135. Is it not a fact you just reported to him the disposition of these four cargoes?

Ans. No, it is not.

C. Q. 137. Have you a copy of any letter which you sent to him showing the disposition of the 1,068 tons?

Ans. I have not got the correspondence with me here. I had this list of 1,068 tons in Providence three years ago,

By the Court: Were your computations on that?

Ans. Yes, sir.

(By Mr. Haslam:)

C. Q. 138. You say the computations were on those papers. You don't mean there is any figures showing how you arrived at this proportionate amount, do you?

Ans. No; I have not got how I figured out the proportionate amount, no.

C. Q. 139. All you have got is a list of the total amount of coal given to these vessels and the proportionate amount of the 1,068 tons?

Ans. Yes, sir.

C. Q. 140. That is all you have?

Ans. Yes, sir; I have a list of the 1,068 tons, and a list of the four cargoes.

177 By the Court: You mean, you have got a list of the proportionate amounts of the 1,068 tons?

Ans. A list of the different amounts to make up the 1,068 tons.

By the Court: Let us see what it is.

(Witness shows paper to the Court.)

By the Court: Any further questions, Mr. Haslam?

(By Mr. Haslam:)

C. Q. 141. As I understand, Mr. Horton, you don't claim that these proportionate amounts of the 1,068 tons, which were given us, are absolutely correct?

Ans. Not even to a ton or the fraction of a ton; no.

By the Court: Are they correct except as to such variations you have mentioned?

Ans. They are.

Mr. Haslam: That is all; no further questions.

By the Court: This is a motion to reopen the case. I think Mr. Horton is honest, and apparently he has no reason to testify otherwise than as to the facts. I think the evidence shows he did make a deduction of these 1,068 tons of coal therefore it appears that it was deducted before the testimony went into the main case, therefore the decree, as entered, would be erroneous in that it made the deduction of 20 per cent. This was so important an error that I think the case should be reopened, and the motion to reopen is granted.

It simply results in taking this testimony again. Do you care,

Mr. Haslam, to have this testimony taken again?

178 Mr. Haslam: No, I don't.

By the Court: You make no objection to having this testimony go into the record as an enlargement of the record and your objection is not on that.

Mr. Haslam: If the case is to be reopened, it is agreeable to me that this record, this testimony should go in as part of the record, subject to my exception to your Honor's reopening the case and modifying the decree already entered.

Mr. Healy: Will your Honor give an order for that direct or will the statement, as it stands on the record——

By the Court: I will direct that an order be entered, that this evidence being in the case, the record will be enlarged by the addition of this testimony, and the decree will be amended by omitting the deduction of 20 per cent.

The decree will be a re-draft decree in making the correction. I do not know that it is necessary to re-draft the whole thing. The decree was originally entered. That decree, of course, will stand. I will reopen the case and order that the decree may be reformed by striking out the deduction of 20 per cent.

Mr. Haslam: Will you have my exception noted on the record to your Honor's entering of this order of the reopening of the case.

By the Court: You may have that exception, Mr. Haslam.

179 *Interlocutory Order to Reopen Case for Production of Further Testimony.*

(Filed in Consolidated Cause #1359, November 1, 1917.)

The petition of the Libellant in the above entitled cause, filed on the 29th day of September, A. D., 1917, to re-open said cause for the production of further testimony, for the reasons and causes in said petition mentioned and set forth, coming on for hearing; now after consideration of the testimony of Charles R. Horton in relation to the matters mentioned in said petition and the arguments of counsel, and it appearing that the facts in relation to such matter have only just been discovered and have been promptly and seasonably brought to the attention of the Court, it is now

Ordered, that the motion of said Libellant that said cause be reopened for the production of further testimony be, and the same is hereby granted.

Entered as the order of Court this 1st day of November, A. D. 1917.

THOMAS HOPE,

Clerk.

Enter as of October 19, 1917.

ARTHUR L. BROWN, J.

The exception of the Claimant to the above order is hereby noted.

ARTHUR L. BROWN, J.

Interlocutory Order to Amend Final Decree.

(Filed in Consolidated Cause #1359, November 1, 1917.)

Pursuant to the order of the 19th day of October, A. D. 1917, re-opening said cause, this cause came on for a further hearing.

Counsel for the Claimant reserving his exception to the order re-opening said cause, but consenting that the testimony of Charles R. Horton, taken before this Court this day on the Petition to re-open, should be used as the testimony upon this hearing, pursuant to the order permitting the re-opening of said cause, it is, therefore,

Ordered, that the testimony of Charles R. Horton be added to the evidence in the case.

The case was then further heard upon said testimony.

And thereupon the Court was of the opinion that in the testimony of Charles R. Horton given at the first hearing of said cause on June 14, 1915, and the stipulation filed August 20, 1915, on behalf of the Libellant, there was manifest error, in that a deduction of 1,068 tons of coal, being the amount of lien coal, so called, on hand, had already been made from the amount of coal actually consumed by said vessels, and that by the deduction of the amount of 20% from the amounts of coal found by the decree to have been used by them, there would result an error of double deduction of the amount of 1,068 tons of non-lien coal, so called, it is, therefore,

Ordered, Adjudged and Decreed that the decree entered herein on the 10th day of July, A. D. 1917, be amended by eliminating therefrom all reference to the 20% deduction ordered by the Court in its opinion filed on the 29th day of January, A. D. 1917, from

the amount shown to have been consumed from Promised
181 Land by said steamers, respectively, and that said amended
decree be for the full amount shown to be due to the respective
vessels by the evidence before the Court at the time of the hearing
of said cause, without any deduction on account of any coal on
hand at Promised Land when the first of said four cargoes was de-
livered there.

Draft decree amended in accordance with this order, with interest computed to November 1, 1917, may be presented accordingly.

Entered as the Order of Court this 1st day of November, A. D. 1917.

THOMAS HOPE,
Clerk.

Enter as of October 19, 1917.

ARTHUR L. BROWN, J.

The exception of the Claimant to the above order amending said decree is hereby noted.

ARTHUR L. BROWN, J.

Claimant's Waiver of Objections to Form of Decree.

(Filed in Consolidated Cause #1359, November 1, 1917.)

The claimant does not object to the entry of the amended decrees of the Piedmont & Georges Creek Coal Company, against the respective steamers filed to-day, but does not however consent to the entry of such decrees as establishing liability as to said maritime liens.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

182

Amended Final Decree.

(Filed in Consolidated Cause #1359, November 1, 1917.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, Adjudged and Decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett, No. 1329 and Rollin E. Mason, No. 1333, having been consolidated, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this case and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land

4,459 tons value of \$14,625.52

1 cargo coal at Tiverton, R. I.

861 tons value of \$3,228.75

Total 5,320 tons value of \$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

183 To all steamers mentioned
in consolidated libels—

	Tons.	Tons.		Value.	Total Value.
From Promised Land	2,778	@ \$3.28	\$9,111.84		
From Tiverton	626.5	@ \$3.75	2,349.37		\$11,461.21
To the following vessels not yet libelled—					
From Promised Land					
Str. Portland	148				
" Strong	157				
" Sanford	3				
" East Hampton	482	790 @ \$3.28	\$2,591.20		
From Tiverton					
Str. East Hampton	125.25				
Str. Strong	18.25				
" Sanford	13.				
" Adroit	7.	163.5 @ \$3.75	\$613.13		\$3,204.33
That there was used by the					
factory at Promised					
Land	891	@ \$3.28	\$2,922.48		
By the Factory at Tiverton	71	@ \$3.75	266.25		\$3,188.73
	4,459	861			\$17,854.27

It further appearing that there was on hand at Promised Land, at the time the four cargoes of coal in dispute were delivered there amounting to..... 4,459 tons

Other coal belonging to the Atlantic Phosphate & Oil Corporation, which had been paid for, amounting to 1,068 tons

A Total of 5,527 tons

184 That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence, that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as hereinbefore set forth, there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1,068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, Ordered, Adjudged and Decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger used as hereinbefore and hereinafter shown and set forth.

It also appearing, that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate

& Oil Corporation at Promised Land and at Tiverton, in its business out of that furnished by the Libellant, coal to the value of \$3,188.75, payment for which was due and unpaid on August 24, 1914:

It is, therefore, Ordered, Adjudged and Decreed, that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2,000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Walter Adams from the cargoes of coal in dispute in this action—

99 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$324.72
--	----------

And also 22.25 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	83.41
---	-------

Or the sum of.....	\$408.16
--------------------	----------

And that the said Libellant is justly entitled to have and recover from the fishing steamer said sum of \$408.16, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	79.59
--	-------

Or a total amount of.....	\$487.75
---------------------------	----------

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Company, did provide and furnish to the fishing steamer Alaska from the cargoes of coal in dispute in this action—

304 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$997.12
---	----------

And also 113.25 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	424.69
--	--------

Or the sum of.....	\$1,421.81
--------------------	------------

186 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1,421.81, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of.....	\$277.25
--	----------

Or a total amount of.....	\$1,699.06
---------------------------	------------

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Arizona from the cargoes of coal in dispute in this action—

35 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$114.80
--	----------

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$114.80, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	\$22.39
---	---------

Or a total amount of.....	\$137.19
---------------------------	----------

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer George Curtiss from the cargoes of coal in dispute in this action—

193 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton amounting to.....	\$633.04
--	----------

And also 36.5 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	\$136.88
--	----------

Or the sum of	\$769.92
---------------------	----------

187 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$769.92, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	\$150.13
---	----------

Or a total amount of	\$920.05
----------------------------	----------

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Montauk from the cargoes of coal in dispute in this action—

121 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$396.88
--	----------

And also 56.5 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	211.88
--	--------

Or the sum of	\$608.76
---------------------	----------

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$608.76, together with interest thereon from August 1,

1914, to November 1, 1917 amounting to the further sum of	\$118.71
Or the total sum of	\$727.47

It is Ordered, Adjudged and Decreed by the Court that the Libellant the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Quickstep from the cargoes of coal in dispute in this action—

19 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$62.32
188 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$62.32, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	12.15
Or a total amount of	\$74.47

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Ranger from the cargoes of coal in dispute in this action—

253 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$829.84
And also 84.5 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to	\$316.88
Or the sum of	1,146.72
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1,146.72, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	223.61
Or a total amount of	\$1,370.33

The total amount due from all of said steamers amounting to	\$5,416.32
Together with costs as taxed, amounting to the sum of	194.30
Total	\$5,610.62

And it further appearing that said fishing steamers Walr Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and
 189 Ranger, were released in this cause upon the filing of a bond in the sum of \$19,000.00 by the Claimant, the Seaboard

Fisheries Company, and its surety, the Equitable Surety Company, as obligors; it is further

Ordered, Adjudged and Decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fifty-six Hundred and Ten and 62/100 Dollars (\$5,610.62), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further Ordered, Adjudged and Decreed that unless an appeal be taken from this decree on or before November 3, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Enter November 1, 1917.

ARTHUR L. BROWN.

Entered as Decree of Court this 1st day of November, A. D. 1917.
THOMAS HOPE.

Clerk.

190

Claimant's Petition for Appeal.

(Filed in Consolidated Cause #1359, November 9, 1917.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about June 16, 1915, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamers to recover "certain unspecified sums of money due for coal used by each of the several vessels libelled," with interest and costs, as by reference to said libel will more fully appear.

2. On or about the 9th day of July, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the total sum of Forty-five Hundred Thirty-six and 39/100 Dollars (\$4,536.39) against all of said vessels libelled and the sum of One Hundred Thirty-one and 35/100 Dollars (131.35) as costs.

4. On October 19, 1917 the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony
191 therein and after the production of such additional testimony
ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the total sum of Fifty-four Hundred and Sixteen and 32/100 Dollars (\$5,416.32) as a maritime lien against all of the said fishing steamers libelled and the sum of One Hundred Ninety-four and 30/100 Dollars (\$194.30) as costs.

5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Fifty-four Hundred and Sixteen and 32/100 Dollars (\$5,416.32) and the said sum of One Hundred Ninety-four and 30/100 Dollars (\$194.30) as costs.

6. For this and other reasons the above named claimant and appellant appeal from said amended final decree to the United States Circuit Court of Appeals for the First Circuit and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reserved and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors for Claimant.

Appeal allowed, November 9, 1917.

ARTHUR L. BROWN, J.

192

Assignment of Errors by Claimant.

(Filed in Consolidated Cause #1359, November 9, 1917.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessels libelled, as appears on pages 73-75 of this record.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessels libelled, as appears on pages 80-82 of this record.

3. In that said Court at the trial of said cause admitted certain testimony of Charles E. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessels libelled, as appears on pages 84-85 of this record.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessels upon the credit of said vessels and not upon the credit of the owners thereof.

5. In that the Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats., 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessels libelled for such coal as was actually used by said vessels.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessels although said coal had been delivered to the owner of the said vessels for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that libellant was entitled to a maritime lien for coal used by said vessels under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats., 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said court held that no credit should be given or allowed for the payment of said sum of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessels libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case

allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January, A. D. 1917, from the amounts shown to have been consumed from Promised Land by said Steamers and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the

195 Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessels in the sum of \$5,416.32, together with costs taxed at \$194.30, or a total sum of \$5,610.62.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors for Claimant.

196

Appeal Bond.

(Filed in Consolidated Cause No. 1359, November 9, 1917.)

United States Circuit Court of Appeals for the First Circuit.

Bond to Party on Appeal.

Know all Men by These Presents, That we, Seaboard Fisheries Company, Inc., a corporation organized under the laws of the State of New York, with its principal place of business at 60 Broadway, City, County and State of New York, principal, and American Surety Company of New York, a corporation organized under the laws of the State of New York, with its principal place of business at 100 Broadway, City, County and State of New York, as sureties, are held and firmly bound unto Piedmont & Georges Creek Coal Company a corporation, and libellant in that case in admiralty herein-after described, in the full and just sum of Two Hundred and Fifty Dollars (\$250) to be paid to the said Piedmont & Georges Creek Coal Company, certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 8th day of November, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a session of the District Court of the United States for the District of Rhode Island, in a suit in admiralty de

pending in said Court between Piedmont & Georges Creek Coal Company against Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, their engines, boats, etc., numbered in admiralty 1359, a decree was entered against the said Seaboard Fisheries Company, Inc., on the 1st day of November, A. D. 1917, and the said Seaboard Fisheries Company, Inc., having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Piedmont & Georges Creek Coal Company citing and admonishing it to be and appear in the said United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, on the 8th day of December, A. D. 1917.

Now, the condition of the above obligation is such, That if the said Seaboard Fisheries Company, Inc., shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

Scaled and delivered in the presence of

SEABOARD FISHERIES CO., INC.,
GARDNER, PIRCE & THORNLEY,
AMERICAN SURETY CO. OF NEW
YORK.

By S. E. DAVIS,

Resident Vice-Pres't.

H. W. PIKE,

Resident Ass't Sec'y.

Approved:

ARTHUR L. BROWN, J.

198

Citation on Appeal.

(Filed in Consolidated Cause #1359.)

United States Circuit Court of Appeals for the First Circuit.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, on the 8th day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Seaboard Fisheries Company, Inc., is appellant and you are appellee,

to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this 9th day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,

United States District Judge.

199

Stipulation as to Filing of Certain Papers.

(Filed in Consolidated Cause No. 1359.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such time as was extended by stipulation and order of said Court.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

FRANK HEALY,

Proctor for Libellant.

Stipulation as to the Record on Appeal.

(Filed in Consolidated Cause #1359.)

It is hereby agreed that the foregoing testimony, pleadings, opinions and other documents shall constitute the record on appeal in the above entitled case, and need not be certified by the Clerk of the District Court except as an agreed record.

FRANK HEALY,

Proctor for Libellant.

GARDNER PIRCE & THORNLEY,

Proctors for Claimant.

200a

Citation on Appeal.

UNITED STATES OF AMERICA, ss.:

The President of the United States To the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, wherein Seaboard Fisheries Company, Inc., is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

NOVEMBER 17, 1917.

I, the undersigned, as proctor for the within-named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

(Filed in Circuit Court of Appeals December 15, 1917.)

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE,
Clerk.

Enter December 7, 1917.

ARTHUR L. BROWN, J.

Assented to.

FRANK HEALY.

Proctor for Libellant.

United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1328.

FISHING STEAMER HERBERT N. EDWARDS, SEABOARD FISHERIES COMPANY, Inc., appellant, v. Piedmont & Georges Creek Coal Company, Appellee.

201 United States District Court, District of Rhode Island.

Admiralty No. 1334. Petition of Piedmont & Georges Creek Coal Company to Intervene.

BENJAMIN MARCHANT, et al., Libellant,

against

FISHING STEAMER HERBERT N. EDWARDS.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1334.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libellant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Herbert N. Edwards is now within this District and is being held subject to the process of this court in the libel hereto instituted herein by Benjamin Marchant.

202 et al. against the fishing steamer Herbert N. Edwards, No. 1334 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914 the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was un-

willing to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth, In pursuance of the said contract and on the faith and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 tons at \$3.30 delivered.....	\$3,006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 tons at \$3.65 delivered	3,365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914. To 1,187 tons at \$3.10.....	\$3,679.70
To Dock & Trimming charges.....	44.61
	<hr/> 3,724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 tons at \$3.75 delivered	3,228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.	

204	To 1,439 tons at \$3.10.....	\$4,460.90	
	To Towing & Trimming charge.....	65.17	4,526.07
			<hr/>
			\$17,850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Herbert N. Edwards, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was \$3,006.30, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Herbert N. Edwards for the value of the said coal so sold, delivered and furnished on May 19th, 1914, in the sum of \$3,006.30, with interest thereon from May 19th, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Herbert N. Edwards, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Herbert N. Edwards and the other steamers above mentioned, was intended for their use and actually used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so

205 sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 1 hereof and therein set opposite to the names of the said vessels, and it now has and since May 19th, 1914, has had, a good and valid maritime lien against the steamer Herbert N. Edwards in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on May 19th, 1914, as above set forth, in the sum of \$3,006.30, with interest thereon from May 19, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about May 19th, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of

the steamer Herbert N. Edwards, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Herbert N. Edwards, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Herbert N. Edwards 911 tons of coal of the reasonable and agreed value of \$3,006.30. Wherefore, the petitioner has a maritime lien on the Steamer Herbert N. Edwards, for the said agreed value of the said coal in the sum of \$3,006.30, with interest thereon from May 19, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Herbert N. Edwards and the Atlantic Phosphate & Oil Corporation for use on the steamer Herbert N. Edwards, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Herbert N. Edwards and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Herbert N. Edwards for the value of the coal so sold and furnished to her in the sum of \$3,006.30, with interest thereon from May 19, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Herbert N. Edwards, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Herbert N. Edwards, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Herbert N. Edwards and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since May 19, 1914, has had a good and valid maritime lien against the said steamer Herbert N. Edwards for the reasonable and agreed value of the coal so furnished in the sum of \$3,006.30, with interest thereon from May 19, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libellant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Herbert N. Edwards, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claim to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Herbert N. Edwards and in favor of your petitioner for the amount of its said maritime lien, to wit, \$3,006.30 with interest thereon from May 19, 1914, together with the cost and disbursements of the petitioner in this action, and

that the fishing steamer Herbert N. Edwards be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Petitioner.

208 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

CLETUS KEATING,

Notary Public, 2068. New York County.

[SEAL.]

209 *Libellant's Stipulation for Costs.*

District Court of the United States, District of Rhode Island.

(Filed Dec. 4, 1914, in Admr. #1334.)

Whereas a libel was filed in this court on the ——day of December, A. D. 1914 by Piedmont & Georges Creek Coal Company against the fishing steamer "Herbert N. Edwards" for the reasons and causes in the said libel mentioned and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and the Fidelity & Deposit Company of Maryland, its surety, hereby consenting and agreeing that in the case of default or contumacy on the part of the libellant or surety, execution may issue against their goods, chattels and lands for the sum of two Hundred and Fifty Dollars (\$250.)

Now, Therefore, it is stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and are bound in the sum of Two Hundred and Fifty Dollars (\$250) and

that the libellant above named shall pay all such costs as shall be awarded against it by this court or in case of appeal by the Appellate Court.

(Signed)

PIEDMONT & GEORGES
CREEK COAL CO.,
By FRANK HEALY, *Att'y*,
FIDELITY & DEPOSIT CO.
OF MARYLAND,
By WM. B. GREENOUGH,
Attorney in Fact.

Attest:

G. L. & H. J. GROSS,

Agents,

By JAMES F. PHETTEPLACE.

210 *Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.*

(Filed Dec. 7, 1914, in Admr. #1334.)

And now appears I. R. Oeland and Alfred C. Coxe, Jr., receivers of Atlantic Phosphate & Oil Corporation, a corporation organized under the laws of the State of New York, said receivers having been appointed by this court in a proceedings entitled "Waldemar Schmidtman, claimant, vs. Atlantic Phosphate & Oil Corporation, defendant," Equity No. 44, and state that said Atlantic Phosphate & Oil Corporation was and is the owner of said fishing steamer Herbert N. Edwards and for and on behalf of said Atlantic Phosphate & Oil Corporation claim the said fishing steamer Herbert N. Edwards and pray to protect this fishing steamer accordingly.

GARDNER, PIRCE & THORNLEY.

DISTRICT OF RHODE ISLAND,

City and County of Providence:

William H. Thornley being duly sworn, says that Atlantic Phosphate & Oil Corporation is the true and bona fide owner, subject to certain mortgage liens against said fishing steamer Herbert N. Edwards by Benj. Marchant, et al., libellant; that said I. R. Oeland and Alfred C. Coxe, Jr., are the receivers of said Atlantic Phosphate & Oil Corporation; that no other person is the owner of said fishing steamer; that for the purpose of this suit deponent is the agent of the owner of said receivers and is duly authorized by said receivers to put in their claim.

WILLIAM H. THORNLEY.

Sworn to before me this 7th day of December, A. D. 1914

HENRY W. GARDNER,

Notary Public.

211 *Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.*

(Filed Dec. 5, 1914, in Admr. #1334)

The President of the United States of America to the Marshall of the District of Rhode Island or his Deputy, Greeting:

Whereas an intervening libel has been filed on the 4th day of December, 1914, by Piedmont & Georges Creek Coal Company against the steamer "Herbert N. Edwards" her boilers, engine, boats, tackle, apparel, furniture and appurtenances for the reasons and causes in said intervening libel mentioned, these are therefore to command you to serve this monition upon I. R. Oeland and Alfred G. Coxe, Jr., as they are receivers of Atlantic Phosphate & Oil Corporation and claimants herein, of the pendency of said intervening libel on or before December 8, 1914.

And make true return of this monition into the office of the Clerk of this Court on the 14th day of December, 1914.

Witness the Honorable Arthur L. Brown, United States District Judge at Providence within and for the District of Rhode Island this 4th day of December, A. D. 1914.

WILLIAM P. CROSS,

Clerk.

Due and sufficient service of this monition is hereby acknowledged.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimants.

212 *Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.*

(Filed Mar. 9, 1915, in Admr. #1334.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Herbert H. Edwards," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21,

1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation, et al., Defendant, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers
213 have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters
214 alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or

about September, 1914, and after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

215 The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars (\$2,020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3,032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3,800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars (\$2,000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
*Receivers of Atlantic Phosphate & Oil
Corporation, the Claimants Herein,*
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors.

216 STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March,
A. D. 1915.

HENRY W. GARDNER,
Notary Public.

217 *Order to Consolidate with Libel Admiralty No. 1359 and
Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1334.)

On motion of Libellant, Claimant objecting, it is hereby Ordered that the intervening libel of the Piedmont & Georges Creek Coal Company in the above entitled cause be, and the same is hereby consolidated with the Libel Admiralty No. 1359, entitled Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtis, Montauk, Quickstep and Ranger.

And it is further ordered that on the filing in this Court of a bond with good and sufficient surety, in the sum of Nineteen Thousand (\$19,000.00) Dollars, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as may be allowed to the Libellant; the stipulators on the Stipulation for Value heretofore filed in this cause, No. 1334, in so far as the intervening libel of the said Piedmont & Georges Creek Coal Company is concerned, shall be released and discharged from any liability under their said stipulation, and that any recovery in this cause shall be paid and satisfied out of the bond given in the consolidated cause as aforesaid.

By the Court (Brown, J.), June 22, 1915.

WILLIAM P. CROSS,
Clerk.

Entered this 22nd day of June, A. D. 1915.
ARTHUR L. BROWN, J.

218 *Warrant of Delivery.*

(Filed June 29, 1915, in Admr. #1334.)

The President of the United States of America to the Marshall of the United States for the *United States* or to his Deputy Greetings:

Whereas, by agreement of counsel it has been ordered by the District Court of the United States for the District of Rhode Island, that the steamer "Herbert N. Edwards," her engines, boilers, tackle, apparel and furniture now in your custody under process of said court be delivered up to I. R. Oeland and Alfred G. Cox, Jr., re-

ceivers of the Atlantic Phosphate & Oil Corporation, claimants of the within named vessel,

You are therefore hereby commanded to deliver up to said Claimants the said vessel, her engines, boilers, tackle, apparel and furniture, taking receipt of said claimants for the same on this warrant of delivery.

And make the due return of this warrant in the Clerk's Office of said Court.

Witness the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island this 17th day of June, 1915.

WILLIAM P. CROSS,

Clerk.

Executed at Providence, in the District of Rhode Island, on this 17th day of June, A. D. 1915, by delivering the within named steamer to its owners and taking their receipts for the same.

JOHN J. RICHARDS,

U. S. Marshall.

219 *Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.*

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1334.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

220

Stipulation as to Exhibits.

(Filed in Admr. #1334.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibit 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court if Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal

herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1334.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

221 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Herbert N. Edwards and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Herbert N. Edwards, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,

Proctor for Petitioner.

STATE OF RHODE ISLAND,

County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,

Notary Public.

Opinion of Court.

(Filed January 29, 1917, in Admr. #1334.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1334.)

Now comes the claimants in the above entitled cause and file their objections to the draft decree filed by counsel for the libellant.

1. Because no credit has been given or allowed in the draft decree filed herein for the payment of \$2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels in those causes which were consolidated with and tried at the same time as the above entitled libel, in accordance with the opinion of this court filed January 29, 1917.

2. Because said payment of \$2,000 is applied "in reduction of the open account due and unpaid for coal furnished and used
223 by the Atlantic Phosphate & Oil Corporation, but which the libellant has been unable to trace to the vessels, and for which it has no security."

3. Because the statement made on page 2 of said decree and elsewhere that it is unable to trace 891.8 tons of coal delivered at Promised Land and that the same is "left unaccounted for," whereas the said coal can be traced and is accounted for as being used by the claimants' plant at said place as appears in the opinion of this court in said cause filed January 29, 1917.

4. Because in the statement of taxable costs in said decree there is included a proctor's fee of \$20, although a similar fee is charged in each of the five other libels which were all consolidated with the said cause by order of said court, tried together by the same attorneys, and proved by the same witnesses.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimants.

Opinion of Court.

(Filed July 10, 1917, in Admr. #1334.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admir. #1334.)

This cause, together with Admiralty causes Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of . . .	\$14,625.52
1 cargo coal at Tiverton, R. I., . . . 861 tons value of . . .	3,228.75
Total	5320 tons value of . . . \$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned
in consolidated libels—

	Tons.	Value.
From Promised Land 2778,		
less 20%	2222.4 @ 3.28—	\$7289.48

To all steamers mentioned
in consolidated libels—

From Tiverton	626.5 @ 3.75—	\$2349.39
		\$9638.87
	2848.9 tons	

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148	
Str. Strong	157	
Str. Sanford	3	
Str. East Hampton . .	482	
790, less 20%	632. @ 3.28—	\$2072.95

From Tiverton—

Str. East Hampton 125.25		
226		
Str. Strong	18.25	
Str. Sandford	13.	
Str. Adroit	7.	163.5 @ 3.75— \$613.13
		\$2686.08
	795.5 tons	

That there was used by the
factory at Promised Land
891, less 20%

712.8 @ 3.28—\$2337.97

By the factory at Tiverton
This left unaccounted for,

71. @ 3.75— \$266.25

but used by the Atlantic
Phosphate & Oil Corpora-
tion at Promised Land
where Libellant cannot
trace it

891.8 @ 3.28—\$2925.10 \$5529.32

Total cargoes 5320 tons Value \$17854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to 4459 tons
 Other coal belonging to the Atlantic Phosphate & Oil corporation which had been paid for, amounting to... 1068 tons
 Total 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and
 227 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars (\$5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Herbert N. Edwards, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

339.2 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$1112.58
228 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1112.58, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of..	194.70
or a total amount of.....	\$1307.28
together with costs as taxed, amounting to the sum of....	46.50
	<hr/> \$1353.78

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors; it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Thirteen Hundred Fifty-three and 78/100 Dollars (\$1353.78), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk*.

Entered July 10, 1917.

ARTHUR L. BROWN, *J.*

229 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpoena Duces Tecum Filed by Libellant.

Subpoena Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1334.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal

Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

230

Amended Final Decree.

(Filed Nov. 1, 1917, in Admr. #1334.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett, No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of..	\$14,625.32
1 cargo coal at Tiverton, R. I.	861 tons value of..	3,228.73

Total	5320 tons value of..	\$17,854.27
-------------	----------------------	-------------

And it appearing from the testimony that the distribution of this coal was as follows:

231

To all steamers mentioned
in consolidated libels:

	Tons.	Tons.	Value.	Total value.
From Promised Land ..	2778	@	\$3.28	\$9,111.84
From Tiverton		626.5 @	\$3.75	2,349.37
				\$11,461.21

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148
Str. Strong	157
Str. Sanford	3
Str. East Hampton	482

790	@	\$3.28	\$2,591.20
-----	---	--------	------------

From Tiverton—

Str. East Hampton ...	125.25
Str. Strong	18.25
Str. Sanford	13.
Str. Adroit	7.

163.5 @	\$3.75	\$613.13	\$3,204.33
---------	--------	----------	------------

That there was used by
the Factory at Prom-

ised Land

891	@	\$3.28	\$2,922.48
-----	---	--------	------------

By the Factory at Tiv-

erton

71 @	\$3.75	266.25	\$3,188.73
------	--------	--------	------------

4459	861		\$17,854.27
------	-----	--	-------------

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to 4459 tons.

232

Other coal belonging to the Atlantic Phosphate & Oil

Corporation which had been paid for, amounting to. . 1068 tons

A total of	5527 tons
------------------	-----------

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the vessel, Herbert N. Edwards, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of \$3,188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2,000 made
233 on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2,000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Herbert N. Edwards from the cargoes of coal in dispute in this action—

424 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$1,390.72
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1,390.72, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of...	271.19
	<hr/>
Amounting to	\$1,661.91
Together with costs as taxed, amounting to the sum of....	48.75
	<hr/>
Or a total amount of	\$1,710.66

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19,000.00 by the

Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

234 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Seventeen Hundred and Ten and 66/100 Dollars (\$1,710.66) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917

THOMAS HOPE, *Clerk*.

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1334.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above captioned cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamer to recover the sum of Three Thousand Six and 30/100 Dollars (\$3,006.30) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Thirteen Hundred Seven and 28/100 Dollars (\$1307.28) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars (\$46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant reopened said case for the production of further testimony therein and

after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Sixteen Hundred and Sixty-one and 91/100 Dollars (\$1,661.91) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

236 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty-one and 91/100 Dollars (\$1661.91) and the said sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,

WILLIAM H. THORNLEY,

Proctors for Claimant.

Appeal Allowed.

November 9, 1917.

ARTHUR L. BROWN, J.

237

Assignment of Errors by Claimant.

(Filed Nov. 9, 1917, in Admr. #1334.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles B. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a

cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how

238 a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels 239 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said cause ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said cause allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said cause ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of \$1661.91, together with costs taxed at \$48.75, or a total sum of \$1710.66.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

241

Bond to Party on Appeal.

(Filed in Admr. #1334.)

United States Circuit Court of Appeals for the First Circuit.

Know all men by these presents. That we, Seaboard Fisheries Company, Inc., a corporation organized under the laws of the State of New York, with its principal place of business at 60 Broadway, City, County and State of New York, as principal, and American Surety Company of New York, a corporation organized under the laws of the State of New York, with its principal place of business at 100 Broadway, City, County and State of New York, as sureties, are held and firmly bound unto Piedmont & Georges Creek Coal Company, a corporation and intervening libellant in that suit in admiralty herein-after described, in the full and just sum of Two Hundred and Fifty Dollars (\$250), to be paid to the said Piedmont & Georges Creek Coal Company, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 8th day of November, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a session of the District Court of the United

States for the District of Rhode Island in a suit in admiralty depending in said Court between Benjamin Marchant et als., libellants, against fishing steamer Herbert N. Edwards, numbered in admiralty

1334, a decree was entered against the said Seaboard Fisheries Company, Inc., on the 1st day of November, A. D. 1917, and the said Seaboard Fisheries Company, Inc., having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Piedmont & Georges Creek Coal Company, citing and admonishing it to be and appear in the said United States Circuit Court of Appeals for the First Circuit in the city of Boston, Massachusetts, on the 8th of December, A. D. 1917.

Now, the condition of the above obligation is such. That if the said Seaboard Fisheries Company, Inc., shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of

SEABOARD FISHERIES CO., INC., [SEAL]

By Its Attorneys,

GARDNER, PIRCE & THORNLEY.

AMERICAN SURETY CO. OF NEW YORK, [SEAL]

By H. E. DAVIS, *Resident Vice-Pres.*

H. W. PIKE, *Resident Asst. Secy.*

Approved:

ARTHUR L. BROWN, J.

243

Citation on Appeal.

(Filed in Admr. #1334.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the ap-

pellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

244 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1334.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

245 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1334.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorpo-

rated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PRICE & THORNLEY,

Proctors for Claimant.

246a

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,

United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
 245b Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk*.

Enter December 7, 1917.

ARTHUR L. BROWN, *J.*

Assented to.

FRANK HEALY,

Proctor for Libellant.

246c United States Circuit Court of Appeals for the First Circuit,
 October Term, 1917.

No. 1329.

Fishing Steamer *ROLLIN E. MASON*.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

247 United States District Court, District of Rhode Island.

Admiralty. No. 1333.

MICHAEL KENNEDY et al., Libellant,

against

Fishing Steamer *ROLLIN E. MASON*.

Petition of Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1333.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libellant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Rollin E. Mason is now within this District and is being held subject to the process of this court
248 in the libel heretofore instituted herein by Michael Kennedy, et al. against the fishing steamer Rollin E. Mason, No. 1333 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith
249 and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at \$3.30 delivered	\$3006.30	
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at \$3.65 delivered	3365.30	
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914. To 1187 Tons at \$3.10.....	\$3679.70	
To Dock & Trimming charges	44.61	
		3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at \$3.75 delivered		3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
250		
To 1439 Tons at \$3.10.....	\$4460.90	
To Towing & Trimming charges...	65.17	
		4526.07
		<u>\$17850.73</u>

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Rollin E. Mason, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was \$3365.30, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Rollin E. Mason for the value of the said coal so sold, delivered and furnished on May 23, 1914, in the sum of \$3365.30, with interest thereon from May 23, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Rollin E. Mason, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Rollin E. Mason and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies

or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 2 hereof and therein set opposite to the names of the said vessels, and it now has and since May 23, 1914, has had, a good and valid maritime lien against the steamer Rollin E. Mason in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on May 23, 1914, as above set forth, in the sum of \$3365.30, with interest thereon from May 23, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about May 23, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Rollin E. Mason, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Rollin E. Mason and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Rollin E. Mason, 922 tons of coal of the reasonable and agreed value of \$3365.30. Wherefore, the petitioner has a maritime lien on the steamer Rollin E. Mason for the said agreed value of the said coal in the sum of \$3365.30, with interest thereon from May 23, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Rollin E. Mason and the Atlantic Phosphate & Oil Corporation for use on the steamer Rollin E. Mason, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Rollin E. Mason and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Rollin E. Mason for the value of the coal so sold and furnished to her in the sum of \$3365.30, with interest thereon from May 23, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Rollin E. Mason, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Rollin E. Mason, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June

23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Rollin E. Mason and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since May 23, 1914, has had a good and valid
 253 maritime lien against the said steamer Rollin E. Mason for the reasonable and agreed value of the coal so furnished in the sum of \$3365.30, with interest thereon from May 23, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libelant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Rollin E. Mason, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Rollin E. Mason and in favor of your petitioner for the amount of its said maritime lien, to wit, \$3365.30, with interest thereon from May 23, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Rollin E. Mason be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
 FRANK HEALY,

Proctors for Petitioner.

254 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

[SEAL.]

CLETUS KEATING,

Notary Public, 2068, New York County.

255

Libellant's Stipulation for Costs.

(Filed Dec. 4, 1914, in Admr. #1333.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1333.)

Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1333.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1333.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Rollin E. Mason," her engines, etc., as the same are pro-
256 ceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation, et al., Defendant, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly

qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter
257 called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

258 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the office of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty

and 02/100 Dollars (\$2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3800), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars (\$2,000) to the libellant as a payment upon the open account with said libellant, for which the said libellant now claims a maritime lien against said steamers, and was accepted as such payment by said libellant; that said draft was paid but 259 that the amount thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND

ALFRED C. COXE, Jr.,

Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein.

By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors.

STATE OF RHODE ISLAND,

County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

260 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1333.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1333.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1333.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamer Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

261 *Stipulation as to Exhibits.*

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. # 1333.)

The Libellant, Piedmont & Georges Creek Coal Company, pray leave to amend the libel heretofore filed in the above entitled cause in accordance with the testimony produced at the trial of said cause as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

262

Motion to Amend Libel.

That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Rollin E. Mason and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Rollin E. Mason, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

263

Opinion of Court.

(Filed January 29, 1917, in Admr. # 1333.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal

Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1333.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

264

Opinion of Court.

(Filed July 10, 1917, in Admr. #1333.)

(This opinion will also be found in the record on appeal of admiralty case number 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1333.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of	\$14,625.3
1 cargo coal at Tiverton, R. I.	3,228.7

Total	5320 tons value of	\$17,854.2
-----------------	----------------------------	------------

And it appearing from the testimony that the distribution of the coal was as follows:

To all steamers mentioned
in consolidated libels—

From Promised Land 2778,	Tons,	Value,
less 20%	2222.4 @ 3.28—	\$7289.48

To all steamers mentioned
in consolidated libels—

From Tiverton	626.5 @ 3.75—	\$2349.39
	<u>2848.9 tons</u>	<u>\$9638.87</u>

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148
Str. Strong	157
Str. Sanford	3
Str. East Hampton	482
790, less 20%	632. @ 3.28—\$2072.95

From Tiverton—

Str. East Hampton 125.25	
266	
Str. Strong	18.25
Str. Sandford	13.
Str. Adroit	7.
	163.5 @ 3.75— \$613.13
	<u>795.5 tons</u>

That there was used by the
factory at Promised Land

891, less 20%	712.8 @ 3.28—\$2337.97
-------------------------	------------------------

By the factory at Tiverton	71. @ 3.75— \$266.25
----------------------------	----------------------

This left unaccounted for,
but used by the Atlantic
Phosphate & Oil Corpora-
tion at Promised Land
where Libellant cannot
trace it

891.8 @ 3.28—\$2925.10	\$5529.3
------------------------	----------

Total cargoes	5320 tons	Value.	\$17854.2
-------------------------	-----------	----------------	-----------

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to	4459 tons
Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to...	1068 tons
Total	5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and 267 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars (\$5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Rollin E. Mason, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

239.2 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$784.32
And also 153 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	573.75

Or the total sum of.....	\$1358.33
268 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1358.33, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	237.70

Or a total amount of.....	\$1596.03
Together with costs as taxed, amounting to the sum of...	46.30
	\$1642.33

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal interest and costs, together making the sum of Sixteen Hundred Forty-two and 53/100 Dollars (\$1642.33), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter July 10, 1917.

ARTHUR L. BROWN, *J.*

269 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpoena Duces Tecum Filed by Libellant.

Subpoena Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1333.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

270 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1333.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of . . . \$14,625.50
 1 cargo coal at Tiverton, R. I. 861 tons value of . . . 3,228.75

Total 5320 tons value of . . . \$17,854.25

And it appearing from the testimony that the distribution of this coal was as follows:

271

To all steamers mentioned
 in consolidated libels:

	Tons.	Tons.	Value.	Total value
From Promised Land . .	2778	@	\$3.28	\$9,111.84
From Tiverton		626.5	@ \$3.75	2,349.37
				\$11,461.21

To the following vessels
 not yet libelled:

From Promised Land—

Str. Portland	148			
Str. Strong	157			
Str. Sanford	3			
Str. East Hampton . . .	482			
	<u>790</u>	@	\$3.28	\$2,591.20

From Tiverton—

Str. East Hampton . . .	125.25			
Str. Strong	18.25			
Str. Sanford	13.			
Str. Adroit	<u>7.</u>			
		163.5	@ \$3.75	\$613.13
				\$3,204.33

That there was used by
 the Factory at Prom-
 ised Land 891 @ \$3.28 \$2,922.48

By the Factory at Tiv- erton		71	@ \$3.75	266.25	\$3,188.75
	<u>4459</u>	<u>861</u>			<u>\$17,854.25</u>

It further appearing that there was on hand at Promised
 Land at the time the four cargoes of coal in dispute
 were delivered there amounting to 4459 tons

272

Other coal belonging to the Atlantic Phosphate & Oil
 Corporation which had been paid for, amounting to . . . 1068 tons

A total of 5527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its net and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Rollin E. Mason, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of \$3188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the claimants are not entitled to have applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Rollin E. Mason from the cargoes of coal in dispute in this action:

299 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$980.72
And also 153 tons of coal at Tiverton, R. I. of the value of \$3.75 per ton amounting to	573.75
	<hr/>
Or the total sum of	\$1,554.47
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1554.47, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of ..	303.12
	<hr/>
Amounting to	\$1,857.59
Together with costs as taxed, amounting to the sum of ...	48.75
	<hr/>
Or a total amount of	\$1,906.34

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the

Equitable Surety Company, as obligors: it is further
274

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Nineteen Hundred and six and 34/100 (\$1,906.34) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.
THOMAS HOPE, Clerk.

Enter November 1, 1917.
ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1333.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States
275 for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty three Hundred Sixty five and 36/100 Dollars (\$3,365.36) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fifteen Hundred ninety-six and 03/100 Dollars (\$1,596.03) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars (\$46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown,

Judge of said District Court, upon the motion of said libellant re-opened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant — of the said sum of Eighteen Hundred and Fifty-seven and 59/100 Dollars (\$1857.59) as a maritime lien against said fishing steamer and

the sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.
 276 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Eighteen Hundred and Fifty-seven and 59/100 Dollars (\$1857.59) and the said sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
 WILLIAM H. THORNLEY,

Proctors for Claimant.

Appeal Allowed.
 November 9, 1917.

ARTHUR L. BROWN, J.

277 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1333.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles B. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000. made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of \$2,000. made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said

case, ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of \$1857.59, together with costs taxed at \$48.75, or a total sum of \$1906.34.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1333.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

281 *Citation on Appeal.*

(Filed in Admr. #1333.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, where Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speed justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

282 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1333.)

It is stipulated by and between said parties that the papers and record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all only filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY, *Proctor for Libellant.*
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

283 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; the evidence for libellant in support of its motion to reopen said cause for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and titled "Piedmont & Georges Creek Coal Company vs. the Fish Steamers Walter Adams, Alaska, Arizona, George Curtiss, Mont"

Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY, *Proctor for Libellant.*

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

284

Stipulation as to Record on Appeal.

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

FRANK HEALY, *Proctor for Libellant.*

284a

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Michael Kennedy et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this

ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.

ARTHUR L. BROWN, *J.*

Assented to.

FRANK HEALY,
Proctor for Libellant.

284c United States Circuit Court of Appeals for the First Circuit
October Term, 1917.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

285 United States District Court, District of Rhode Island.

Admiralty. No. 1336.

JOHN WHALEN et al., Libellant,

against

Fishing Steamer WILLIAM B. MURRAY.*

Petition of Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1336.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libellant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer William B. Murray is now within this District and is being held subject to the process of this
286 court in the libel heretofore instituted herein by John Whalen, et al. against the fishing steamer William B. Murray, No. 1336 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished

which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith of 287 and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at \$3.30 delivered	\$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at \$3.65 delivered	3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.	
To 1187 Tons at \$3.10	\$3679.70
To Dock & Trimming charges	44.61
	<hr/> 3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at \$3.75 delivered	3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.	
288	
To 1439 Tons at \$3.10	\$4460.90
To Towing & Trimming charges	65.17
	<hr/> 4526.07
	<hr/> \$17850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer William B. Murray, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was \$4526.07, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer William B. Murray for the value of the said coal so sold.

delivered and furnished on July 3, 1914, in the sum of \$4526.07 with interest thereon from July 3, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer William B. Murray, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer William B. Murray and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal

289 was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 5 hereof and therein set opposite to the names of the said vessels, and it now has and since July 3, 1914, has had, a good and valid maritime lien against the steamer William B. Murray in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on July 3, 1914, as above set forth, in the sum of \$4526.07, with interest thereon from July 3, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about July 3, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer William B. Murray, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer William B. Murray, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer William B. Murray, 1439 tons of coal of the reasonable and agreed value of \$4526.07. Wherefore, the petitioner
290 has a maritime lien on the steamer William B. Murray for the said agreed value of the said coal in the sum of \$4526.07, with interest thereon from July 3, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer William B. Murray and the Atlantic Phosphate & Oil Corporation for use on the steamer William B. Murray, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer William B. Murray and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien

on the steamer William B. Murray for the value of the coal so sold and furnished to her in the sum of \$4526.07, with interest thereon from July 3, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer William B. Murray, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer William B. Murray, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer William B. Murray and to the Atlantic Phosphate & Oil Corporation for her use, and

now has and since July 3, 1914, has had a good and valid
291 maritime lien against the said steamer William B. Murray for the reasonable and agreed value of the coal so furnished in the sum of \$4526.07, with interest thereon from July 3, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libellant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer William B. Murray, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer William B. Murray and in favor of your petitioner for the amount of its said maritime lien, to wit, \$4526.07, with interest thereon from July 3, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer William B. Murray be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,

Proctors for Petitioner.

292 STATE OF NEW YORK,

County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

[SEAL.]

CLETUS KEATING,

Notary Public, 2068, New York County.

293

Libellant's Stipulation for Costs.

(Filed Dec. 4, 1914, in Admr. #1336.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1336.)

Monition on Interrening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1336.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Interrening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1336.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "William B. Murray," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

294 First, That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21,

1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats 295 "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Maran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libellant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libellant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

296 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or

any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars (\$2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Procter & Gamble in the sum of Two Thousand Dollars (\$2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof
297 was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, Jr.,

*Receivers of Atlantic Phosphate & Oil
Corporation, the Claimants Herein.*

By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors.

STATE OF RHODE ISLAND,
County of Providence;

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

298 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1336.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1336.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1336.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

299 *Stipulation as to Exhibits.*

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY, *Proctor for Libellant.*
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1336.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

300 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said William B. Murray and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer William B. Murray, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

301 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1336.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek

Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1336.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

302

Opinion of Court.

(Filed July 10, 1917, in Admr. #1336.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1336.)

This cause together with Admiralty causes, Fishing Steamers Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree,

in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of..	\$14,625.52
1 cargo coal at Tiverton, R. I. 861 tons value of..	3,228.75

Total	5320 tons value of..	\$17,854.27
-------------	----------------------	-------------

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned
in consolidated libels—

From Promised Land 2778,	Tons.	Value.
less 20%	2222.4 @ 3.28—	\$7289.48

To all steamers mentioned
in consolidated libels—

From Tiverton	626.5 @ 3.75—	\$2349.39
		\$9638.87
	2848.9 tons	

To the following vessels not
yet libelled:

From Promised Land—

Str. Portland	148
Str. Strong	157
Str. Sanford	3
Str. East Hampton ...	482
790, less 20%	632. @ 3.28—\$2072.95

From Tiverton—

Str. East Hampton	125.25
304	
Str. Strong	18.25
Str. Sanford	13.
Str. Adroit	7.
	163.5 @ 3.75— \$613.13
	795.5 tons
	\$2686.08

That there was used by the
factory at Promised Land

891, less 20%	712.8 @ 3.28—\$2337.97
By the factory at Tiverton.	71. @ 3.75— \$266.25

This left unaccounted for,
but used by the Atlantic
Phosphate & Oil Corpora-
tion at Promised Land
where Libellant cannot
trace it

891.8 @ 3.28—\$2925.10	\$5529.32
------------------------	-----------

Total cargoes	5320 tons	Value,	\$17854.27
---------------------	-----------	--------------	------------

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to 4459 tons

Other coal belonging to the Atlantic Phosphate & Oil corporation which had been paid for, amounting to 1068 tons

Total 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and 305 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars (\$5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer William B. Murray, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

230.4 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$755.71
And also 118.75 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton amounting to	445.31
Or the total sum of	\$1201.02

306

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1201.02, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	210.18
---	--------

Or a total amount of	\$1411.20
Together with costs as taxed, amounting to the sum of ..	46.50
	<u>\$1457.70</u>

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fourteen Hundred Fifty-seven and 70/100 Dollars (\$1457.70), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk*.

Enter July 10, 1917.

ARTHUR L. BROWN, *J.*

307 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.**Petition for Subpoena Duces Tecum Filed by Libellant.**Subpoena Duces Tecum and Officer's Return Thereon.**Evidence in Support of Libellant's Motion to Reopen Case.**Interlocutory Order to Reopen Case for Production of Further Testimony.**Interlocutory Order to Amend Final Decree.*

(Filed in Admr. #1336.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

308

Amended Final Decree.

(Filed Nov. 1, 1917, in Admr. #1336.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is:

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 2334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket on this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of	\$14,625.52
1 cargo coal at Tiverton, R. I.	861 tons value of	3,228.75
total—5320 tons value of		\$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

309

To all steamers mentioned
in consolidated libels—

From Promised Land:

	Tons.	Tons.	Value.	Total value.
	2,778	@ \$3.28	\$9,111.84	
From Tiverton		626.5 @ \$3.75	\$2,349.37	\$11,461.21

To the following ves-
sels not yet libelled—

From Promised Land:

Str. Portland	148			
Str. Strong	157			
Str. Sanford	3			
Str. East Mampton. . .	482			
	790	@ \$3.28	\$2,591.20	
From Tiverton:				
Str. East Hampton. .	125.25			
Str. Strong	18.25			
Str. Sanford	13.			
Str. Adroit	7.			
	163.5	@ \$3.75	\$613.13	\$3,204.33

That there was used
by the Factory at
Promised Land:

	891	@ \$3.28	\$2,922.48	
By the Factory at Tiverton	71	@ \$3.75	266.25	\$3,188.73
	4,459	861		\$17,854.27

It further appearing that there was on hand at Promised
Land at the time the four cargoes of coal in dispute
were delivered there amounting to. 4,459 tons

310

Other coal belonging to the Atlantic Phosphate & Oil
Corporation which had been paid for, amounting to. . 1,068 tons

A total of. 5,527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessel from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1,068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the William B. Murray, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of \$3,188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have 311 applied the whole or any part of the payment of \$2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2,000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer William B. Murray from the cargoes of coal in dispute in this action—

288 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$944.64
And also 118.75 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton, amounting to.....	\$445.31
Or the total sum of.....	\$1,389.95
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1,389.95, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of..	271.64
Amounting to	\$1,660.99
Together with costs as taxed, amounting to the sum of..	48.75
Or a total amount of.....	\$1,709.74

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

312 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum afore-said of principal, interest and costs, together making the sum of Seventeen Hundred and Nine and 74/100 Dollars (\$1,709.74) hereinafore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.
THOMAS HOPE, Clerk.

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. # 1336.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit :

The petition of Seaboard Fisheries Company, the claimant herein, respectively shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamer to recover the sum of Forty-five Hundred Twenty-six and 07/100 Dollars (\$4,526.07) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

313 2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fourteen Hundred Eleven and 20/100 Dollars (\$1,411.20) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars (\$46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Sixteen Hundred and Sixty and 99/100 Dollars (\$1660.99) as a maritime lien against *against* said fishing steamer and the sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

314 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty and 99/100 Dollars (\$1,660.99) and the said sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.

ARTHUR L. BROWN, J.

315 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1336.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain

testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how
316 a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels
317 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of \$2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the

amounts shown to have been consumed from Promised Land
318 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of \$1660.99, together with costs taxed at \$48.75, or a total sum of \$1709.74.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1336.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

319

Citation on Appeal.

(Filed in Admr. #1336.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the

city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

320

Stipulation as to Filing of Certain Papers.

(Filed in Admr. #1336.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

321

Stipulation as to Record on Appeal.

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said

case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

322

Stipulation as to Record on Appeal.

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herber N. Edwards.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

FRANK HEALY,

Proctors for Libellant.

322a

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein John Whelan et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the

appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
322b Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.

ARTHUR L. BROWN, *J.*

Assented to.

FRANK HEALY,

Proctor for Libellant.

322c United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

323 United States District Court, District of Rhode Island.

Admiralty. No. 1327.

SIMON POAN et al., Libellant,

against

Fishing Steamer MARTIN J. MARRAN.

Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1327.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libellant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Martin J. Marran is now within this District and is being held subject to the process of this court
324 in the libel heretofore instituted herein by Simon Poan, et al., against the fishing steamer Martin J. Marran, No. 1327 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each

of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at \$3.30 delivered	\$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at \$3.65 delivered	3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914. To 1187 Tons at \$3.10 \$3679.70 To Dock & Trimming charges 44.61	3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at \$3.75 delivered	3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914. To 1439 Tons at \$3.10 \$4460.90 To Towing & Trimming charges, 65.17	4523.07
	<hr/> \$17850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Martin J. Marran, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was

\$3724.31, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Martin J. Marran for the value of the said coal so sold, delivered and furnished on June 9, 1914, in the sum of \$3724.31, with interest thereon from June 9, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Martin J. Marran, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Martin J. Marran and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 3 hereof and therein set opposite to the names of the said vessels, and it now has and since June 9, 1914, has had, a good and valid maritime lien against the steamer Martin J. Marran in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on June 9, 1914, as above set forth, in the sum of \$3724.31, with interest thereon from June 9, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about June 9, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Martin J. Marran, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Martin J. Marran, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Martin J. Marran, 1187 tons of coal of the reasonable and agreed value of \$3724.31. Wherefore the petitioner has a maritime lien on the steamer Martin J. Marran for the said agreed value of the said coal in the sum of \$3724.31, with interest thereon from June 9, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Martin J. Marran and the Atlantic Phosphate & Oil Corporation for use on the steamer Martin J. Marran, the At-

lantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Martin J. Marran and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Martin J. Marran for the value of the coal so sold and furnished to her in the sum of \$3724.31, with interest thereon from June 9, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Martin J. Marran, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Martin J. Marran, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Martin J. Marran and to the Atlantic Phosphate & Oil Corporation for her use, 329 and now has and since June 9, 1914, has had a good and valid maritime lien against the said steamer Martin J. Marran for the reasonable and agreed value of the coal so furnished in the sum of \$3724.31, with interest thereon from June 9, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libellant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Martin J. Marran, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Martin J. Marran and in favor of your petitioner for the amount of its said maritime lien, to wit, \$3724.31, with interest thereon from June 9, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Martin J. Marran be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,
Proctors for Petitioner.

330 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my

own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

[SEAL.]

CLETUS KEATING,

Notary Public, 2068, New York County.

331

Libellant's Stipulation for Costs.

(Filed Dec. 4, 1914, in Admr. #1327.)

Claim of I. R. Oeland and Alfred C. Cox, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1327.)

Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1327.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1327.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Cox, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Martin J. Marran," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar

Schmidtman, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co., as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation, et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of the Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter
333 called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libellant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libellant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

334 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal

mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars (\$2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars (\$2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount
335 thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND

ALFRED C. COXE, JR.,

Receivers of Atlantic Phosphate & Oil

Corporation, the Claimants Herein,

By GARDNER, PIRCE & THORNLEY,

WILLIAM H. THORNLEY,

Proctors.

STATE OF RHODE ISLAND,

County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by per-

sons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

336 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1327.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1327.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All filed in Admr. #1327.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

337 *Stipulation as to Exhibits.*

(Filed in Admr. 1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel

and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admir. #1327.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

338 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said "Martin J. Marran and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Martin J. Marran and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,

Proctor for Petitioner.

STATE OF RHODE ISLAND,

County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,

Notary Public.

339

Opinion of Court.

(Filed January 29, 1917, in Admr. #1327.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1327.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

340

Opinion of Court.

(Filed July 10, 1917, in Admr. #1327.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and entered July 10, 1915, in Admr. #1327.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Amagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subse-

quently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of . . .	\$14,625.52
1 cargo coal at Tiverton, R. I. 861 tons value of . . .	3,228.75

Total	5320 tons value of . . .	\$17,854.27
-----------------	--------------------------	-------------

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned
in consolidated libels—

	Tons.	Value.
From Promised Land 2778, less 20%	2222.4 @ 3.28—	\$7289.48

To all steamers mentioned
in consolidated libels—

From Tiverton	626.5 @ 3.75—	\$2349.39
	<u>2848.9 tons</u>	<u>\$9638.87</u>

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148
Str. Strong	157
Str. Sanford	3
Str. East Hampton . .	482
790, less 20%	632. @ 3.28—\$2072.95

From Tiverton—

Str. East Hampton 125.25	
342	
Str. Strong	18.25
Str. Sandford	13.
Str. Adroit	7.
	163.5 @ 3.75— \$613.13
	<u>795.5 tons</u>
	<u>\$2686.08</u>

That there was used by the
factory at Promised Land

891, less 20%	712.8 @ 3.28—\$2337.97
By the factory at Tiverton	71. @ 3.75— \$266.25

This left unaccounted for,
but used by the Atlantic
Phosphate & Oil Corpora-
tion at Promised Land
where Libellant cannot
trace it

891.8 @ 3.28—\$2925.10 \$5529.32

Total cargoes 5320 tons Value..... \$17854.27

It further appearing that there was on hand at Promised
Land at the time the four cargoes of coal were delivered
there amounting to 4459 tons
Other coal belonging to the Atlantic Phosphate & Oil
corporation which had been paid for, amounting to... 1068 tons
Total 5527 tons

That the coal was all mingled together, and that the entire amount
of coal was used by the Atlantic Phosphate & Oil Corporation, either
in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant
is not entitled to a maritime lien for the entire amount of coal that
was used by each vessel, but that the actual amount of coal used by
each vessel shall be reduced by 20%, which for all practical purposes,
is the proportion of coal that was at Promised Land and
343 which had been paid for at the time that the respective vessels
received all the coal which they consumed after the delivery
of these four cargoes.

It also appearing that over and above the amount for which the
Libellant claims a lien against the respective vessels, libelled and not
libelled, that there was furnished to, and used by the factories of the
Atlantic Phosphate & Oil Corporation at Promised Land and at Tiv-
erton, and also by it in its business, where the Libellant was unable
to trace the same, as determined by the Court, coal to the total value
of Fifty-five Hundred Twenty-nine and 33/100 Dollars (\$5529.33),
payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount,
being due and unpaid, the Claimants are not entitled to have applied
the whole or any part of the payment of \$2000 made on or about
August 24, 1914, to reduce any of the maritime liens for coal fur-
nished to and used by the respective vessels mentioned in the consoli-
dated cause as determined herein, but that said sum of \$2000 should
be applied in reduction of the open account due and unpaid, for coal
furnished and used by the Atlantic Phosphate & Oil Corporation, but
which the Libellant has been unable to trace to the vessels, and for
which it has no security.

It is ordered, adjudged and decreed by the Court that the Libel-
lant, the Piedmont & Georges Creek Coal Company, did provide and
furnish to the fishing steamer Martin J. Marran, after all credits have
been given and deducted, made in accordance with the Opinion
heretofore filed in this case—

200.8 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to	\$658.62
And also 41.75 tons of coal at Tiverton, R. I., at the value of \$3.75 per ton, amounting to	156.56
Or the total sum of	\$815.18

344

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$815.18, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	142.66
Or a total amount of	\$957.84
Together with costs as taxed, amounting to the sum of ...	46.50
	<u>\$1004.34</u>

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Ten Hundred Four and 34/100 Dollars (\$1004.34), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter July 10, 1917.

ARTHUR L. BROWN, *J.*

345 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpoena Duces Tecum Filed by Libellant.

Subpoena Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1327.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

346 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1336.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Amagansett, No. 1329, and Rollin E. Mason, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons	value of..	\$14,325.52
1 cargo coal at Tiverton, R. I.	861 tons	value of..	3,228.75

Total	5320 tons	value of..	\$17,854.27
-------------	-----------	------------	-------------

And it appearing from the testimony that the distribution of this coal was as follows:

347

To all steamers mentioned
in consolidated libels—

	Tons.	Tons.	Value.	Total value
From Promised Land..	2778	@ \$3.28	\$9,111.84	
From Tiverton		626.5 @ \$3.75	2,349.37	\$11,461.21

To the following vessels
not yet libelled—

From Promised Land:

Str. Portland	148
Str. Strong	157
Str. Sanford	3
Str. East Hampton	482

790	@ \$3.28	\$2,591.20
-----	----------	------------

From Tiverton:

Str. East Hampton ..	125.25
Str. Strong	18.25
Str. Sanford	13.
Str. Adroit	7.

163.5 @ \$3.75	\$613.13	\$3,204.33
----------------	----------	------------

That there was used by
the Factory at Prom-
ised Land

891	@ \$3.28	\$2,922.48
-----	----------	------------

By the Factory at Tiv-
erton

71 @ \$3.75	266.25	\$3,188.75
-------------	--------	------------

4459	861.	\$17,854.27
------	------	-------------

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to 4459 tons

348

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to 1068 tons

A total of	5527 tons
------------------	-----------

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Martin J. Marran, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of \$3188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied

the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens

for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Martin J. Marran from the cargoes of coal in dispute in this action—

251 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$823.28
And also 41.75 tons of coal at Tiverton, R. I., of the value of \$3.75 per ton amounting to.....	\$156.56

Or the total sum of.....	\$979.84
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$979.84, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of...	191.07

Amounting to	\$1170.91
Together with costs as taxed, amounting to the sum of...	48.75

Or a total amount of.....	\$1219.66
---------------------------	-----------

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the

Equitable Surety Company, as obligors: it is further
350 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Twelve Hundred Nineteen and 66/100 Dollars (\$1219.66) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk*.

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1327.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United
351 States for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty-seven Hundred twenty-four and 31/100 Dollars (\$3724.31) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Nine Hundred Fifty-seven and 84/100 Dollars (\$957.84) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars (\$46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Eleven Hundred and Seventy and 91/100 Dollars (\$1,170.91) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

352 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty and 99/100 Dollars (\$1,660.99) and the said sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.

ARTHUR L. BROWN, J.

353 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1327.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how
354 a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that
355 the said libellant should have a maritime lien on the vessels belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of \$2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case,

ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts

356 shown to have been consumed from Promised Land by said steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of \$1170.91, together with costs taxed at \$48.75, or a total sum of \$1219.66.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1327.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

357 *Citation on Appeal.*

(Filed in Admr. #1327.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

358 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1327.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

359 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the

record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

360

Stipulation as to Record on Appeal.

(Filed in Admr. #1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

FRANK HEALY,

Proctors for Libellant.

360a .

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for District of Rhode Island, wherein Simon Poan et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the

appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within-named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.) , December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.

ARTHUR L. BROWN, *J.*

Assented to.

FRANK HEALY,
Proctor for Libellant.

360c United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1332.

Fishing Steamer AMAGANSETT.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

361 United States District Court, District of Rhode Island.

Admiralty. No. 1329.

W. OTIS PAYNE et al., Libellant,
against

Fishing Steamer AMAGANSETT.

Petition of Piedmont & Georges Creek Coal Company to Intervene.

*Petition of Intervention of Piedmont & Georges Creek Coal
Company.*

(Filed Dec. 4, 1914, in Admr. #1329.)

To the Hon. Arthur L. Brown, United States District Judge for
the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek
Coal Company, praying to be allowed to intervene as co-libellant
herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and
now is, a corporation existing under and by virtue of the laws of
the State of Maryland, and at all such times was engaged in dealing
in coal.

Second. The fishing steamer Amagansett is now within this Dis-
trict and is being held subject to the process of this Court in the
libel heretofore instituted herein by W. Otis Payne, et al.
362 against the fishing steamer Amagansett, No. 1329 on the
Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914,
the Atlantic Phosphate & Oil Corporation was the owner of the
steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin
J. Marran, Amagansett and William B. Murray. At this time it
was indebted in a large sum to your petitioner for coal previously
supplied, and when it sought to secure coal for the use of the said
vessels during the fishing season of 1914, your petitioner was unwill-
ing to extend any further credit to the Atlantic Phosphate & Oil
Corporation on its own account. On information and belief, the
petitioner alleges that the Atlantic Phosphate & Oil Corporation was
unable to obtain elsewhere credit on its own account for coal to

operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith and credit of the Maritime liens on the said vessels thus agreed
363 expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at \$3.30 delivered		\$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at \$3.65 delivered		3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.		
To 1187 Tons at \$3.10	\$3679.70	
To Dock & Trimming charges	44.61	
		3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at \$3.75 delivered		3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
364		
To 1439 Tons at \$3.10	\$4460.90	
To Towing & Trimming charges...	65.17	
		4526.07
		<u>\$17850.73</u>

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Amagansett, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was \$3228.75, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Amagansett for the value of the said coal so sold, delivered and furnished on June 20, 1914, in the sum of \$3228.75, with interest thereon from June 20, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Amagansett and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Amagansett and the other steamers above mentioned, was intended for their use and actually used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Lien: on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was

so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 3 hereof and therein set opposite to the names of the said vessels, and it now has and since June 20, 1914, has had, a good and valid maritime lien against the steamer Amagansett in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on June 20, 1914, as above set forth, in the sum of \$3228.75, with interest thereon from June 20, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about June 20, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Amagansett, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading New Jersey, to, and for the use of, the steamer Amagansett, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Amagansett, 861 tons of coal of the reasonable and agreed value of \$3228.75. Wherefore, the petitioner has a maritime lien on the steamer Amagansett for the said agreed value of

the said coal in the sum of \$3228.75, with interest thereon from June 20, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Amagansett and the Atlantic Phosphate & Oil Corporation for use on the steamer Amagansett, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Amagansett and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Amagansett for the value of the coal so sold and furnished to her in the sum of \$3228.75, with interest thereon from June 20, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Amagansett, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Amagansett, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Amagansett and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since June 20, 1914, has had a good and valid maritime lien against the said steamer Amagansett for the reasonable and agreed value of the coal so furnished in the sum of \$3228.75 with interest thereon from June 20, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libellant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Amagansett, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Amagansett and in favor of your petitioner for the amount of its said maritime lien, to wit, \$3228.75, with interest thereon from June 20, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Martin J. Marran be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,

Proctors for Petitioner.

368 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

[SEAL.]

CLETUS KEATING,
Notary Public, 2068, New York County

369 *Libellant's Stipulation for Costs.*

(Filed Dec. 4, 1914, in Admr. #1329.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1329.)

Monition on Intervening Libel of Piedmont & George Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1329.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1329.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer

"Amagansett," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation et al., Defendant, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtman, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libellant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libellant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

372 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars (\$2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars (\$3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars (\$3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 21, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars (\$2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof was not credited on the open account
373 but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
*Receivers of Atlantic Phosphate & Oil
Corporation, the Claimants Herein,*
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A D. 1915.

HENRY W. GARDNER,
Notary Public.

374 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1329.)

Warrant of Delivery.

• (Filed June 29, 1915, in Admr. #1329.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1329.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evi-

dence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

375

Stipulation as to Exhibits.

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1329.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

376 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Amagansett and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation and was necessary and proper for the use of said steamer Amagansett, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,

Proctor for Petitioner.

STATE OF RHODE ISLAND,

County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my

information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

377

Opinion of Court.

(Filed January 29, 1917, in Admr. #1329.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimant's Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1329.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

378

Opinion of Court.

(Filed July 10, 1917, in Admr. #1329.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1329.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Herbert N. Edwards No. 1334, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of . . .	\$14,625.52
1 cargo coal at Tiverton, R. I. 861 tons value of . . .	3,228.75
Total	5320 tons value of . . . \$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned
in consolidated libels—

From Promised Land 2778,	Tons.	Value.
less 20%	2222.4 @ 3.28—	\$7289.48

To all steamers mentioned
in consolidated libels—

From Tiverton	626.5 @ 3.75—	\$2349.39
	2848.9 tons	\$9638.87

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148	
Str. Strong	157	
Str. Sanford	3	
Str. East Hampton ..	482	
790, less 20%	632.	@ 3.28—\$2072.95

From Tiverton—

Str. East Hampton 125.25

380

Str. Strong 18.25

Str. Sandford 13.

Str. Adroit 7.

163.5 @ 3.75— \$613.13

\$2686.08

795.5 tons

That there was used by the
factory at Promised Land
891, less 20%

712.8 @ 3.28—\$2337.97

By the factory at Tiverton

71. @ 3.75— \$266.25

This left unaccounted for,
but used by the Atlantic
Phosphate & Oil Corpora-
tion at Promised Land
where Libellant cannot
trace it

891.8 @ 3.28—\$2925.10 \$5529.32

Total cargoes 5320 tons Value..... \$17854.27

It further appearing that there was on hand at Promised
Land at the time the four cargoes of coal were delivered
there amounting to

4459 tons

Other coal belonging to the Atlantic Phosphate & Oil
Corporation which had been paid for, amounting to...

1068 tons

Total 5527 tons

That the coal was all mingled together, and that the entire amount
of coal was used by the Atlantic Phosphate & Oil Corporation, either
in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant
is not entitled to a maritime lien for the entire amount of coal that
was used by each vessel, but that the actual amount of coal used by
each vessel shall be reduced by 20%, which for all practical purposes,
is the proportion of coal that was at Promised Land and
381 which had been paid for at the time that the respective vessels
received all the coal which they consumed after the delivery
of these four cargoes.

It also appearing that over and above the amount for which the
Libellant claims a lien against the respective vessels, libelled and not
libelled, that there was furnished to, and used by the factories of
the Atlantic Phosphate & Oil Corporation at Promised Land and at
Tiverton, and also by it in its business, where the Libellant was un-
able to trace the same, as determined by the Court, coal to the total
value of Fifty-five Hundred Twenty-nine and 33/100 Dollars
(\$5529.33), payment for which was due and unpaid on August 24,
1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Amagansett, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

393.6 tons of coal at Promised Land, Long Island of	
the value of \$328 per ton, amounting to	\$1291.01
382 and that said Libellant is justly entitled to have	
and recover from said fishing steamer said sum of	
1291.01, together with interest thereon from August 1,	
1914 to July 1, 1917, amounting to the further sum of . .	225.93
or a total amount of	\$1516.94
together with costs as taxed, amounting to the sum of . .	46.50
	<hr/>
	\$1563.44

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fifteen Hundred Sixty three and 44/100 Dollars (\$1563.44), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk*.

Entered July 10, 1917.

ARTHUR L. BROWN, *J.*

383 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.**Petition for Subpœna Duces Tecum Filed by Libellant.**Subpœna Duces Tecum and Officer's Return Thereon.**Evidence in support of Libellant's Motion to Reopen Case.**Interlocutory Order to Reopen Case for Production of Further Testimony.**Interlocutory Order to Amend Final Decree.*

(Filed in Admr. #1329.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

384

Amended Final Decree.

(Filed Nov. 1, 1917, in Admr. #1329.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:—

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Herbert N. Edwards, No. 1334, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of..	\$14,625.52
1 cargo coal at Tiverton, R. I.	861 tons value of..	3,228.75
Total	5320 tons value of..	\$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

385

To all steamers mentioned
in consolidated libels:

	Tons.	Tons.	Value.	Total value.
From Promised Land ..	2778	@	\$3.28 \$9,111.84	
From Tiverton	626.5	@	\$3.75 2,349.37	\$11,461.21

To the following vessels
not yet libelled:

From Promised Land—

Str. Portland	148			
Str. Strong	157			
Str. Sanford	3			
Str. East Hampton	482			
	790	@	\$3.28 \$2,591.20	

From Tiverton—

Str. East Hampton ...	125.25			
Str. Strong	18.25			
Str. Sanford	13.			
Str. Adroit	7.			
	163.5	@	\$3.75 \$613.13	\$3,204.33

That there was used by
the Factory at Prom-

ised Land 891 | @ | \$3.28 \$2,922.48 | |

By the Factory at Tiv-

erton	71	@	\$3.75 266.25	\$3,188.73
	4459		861	\$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to 4459 tons.

386

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to.. 1068 tons

A total of 5527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Amagansett, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of \$3188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have
 387 applied the whole or any part of the payment of \$2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of \$2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Amagansett from the cargoes of coal in dispute in this action—

492 tons of coal at Promised Land, Long Island, of the value of \$3.28 per ton, amounting to.....	\$1613.76
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of \$1613.76, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of..	314.68
Amounting to	\$1928.44
Together with costs as taxed, amounting to the sum of..	48.75
Or a total amount of	\$1977.19

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of \$19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

388 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Nineteen Hundred Seventy-seven and 79/100 Dollars (\$1977.19) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment on said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.
THOMAS HOPE, Clerk.

Enter November 1, 1917.
ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1329.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States 389 for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty-two Hundred Twenty-eight and 75/100 Dollars (\$3228.75) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fifteen Hundred Sixteen and 94/100 Dollars (\$1516.94) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars (\$46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant reopened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was

adjudged that the libel be sustained and that the libellant recover the sum of Nineteen Hundred and Twenty-eight and 44/100 Dollars (\$1928.44) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

390 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty-one and 91/100 Dollars (\$1661.91) and the said sum of Forty-eight and 75/100 Dollars (\$48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,

Proctors for Claimant.

Appeal allowed.

November 9, 1917.

ARTHUR L. BROWN, J.

391

Assignment of Errors by Claimant.

(Filed Nov. 9, 1917, in Admr. #1329.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Premised Land and was not delivered or furnished to the said vessel

libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of \$2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of \$2,000 made by the Atlantic Phosphate & Oil Corporation to the Libellant on August 24, 1914, either by prorata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case, ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land 394 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of \$1,928.44, together with costs taxed at \$48.75, or a total sum of \$1,977.19.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1329.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

395

Citation on Appeal.

(Filed in Admr. #1329.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree,

entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,

United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

396 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1329.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

397 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,

Proctor for Libellant.

GARDNER, PIRCE & THORNLEY,

Proctors for Claimant.

398

Stipulation as to Record on Appeal.

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
 FRANK HEALY, *Proctors for Libellant.*

399

Agreement as to the Record on Appeal.

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

It is hereby agreed that the foregoing testimony, pleadings, opinions and other documents, shall constitute the record on appeal in the above entitled cases and need not be certified by the Clerk of the District Court except as an agreed record.

FRANK HEALY,
Proctor for Libellant.
 GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

400

Order.

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

In the above entitled cause, both parties by their respective proctors agreeing thereto, it is

Ordered, that the record annexed hereto shall constitute the record on appeal, and that the Clerk shall certify it as an appeal record without examining it, and without charge, except as may be lawfully made for the certificate itself.

Entered as order of Court December 14, 1917.

THOMAS HOPE, *Clerk.*

Enter:

Dec. 14, 1917.

ARTHUR L. BROWN, *J.*

Clerk's Certificate.

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

I, Thomas Hope, Clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is the record agreed upon by the parties in the above entitled action as a record of the District Court.

In testimony whereof, I have caused the seal of the said Court to be affixed in the City of Providence, this 14th day of December, A. D. 1917.

THOMAS HOPE, *Clerk.*

401

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein W. Otis Payne et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
402 Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk*.

Enter December 7, 1917.

ARTHUR L. BROWN, *J.*

Assented to.

FRANK HEALY,

Proctor for Libellant.

403 United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1327.

Fishing Steamers WALTER ADAMS et al.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

No. 1328.

Fishing Steamer HERBERT N. EDWARDS.

SAME

v.

SAME.

No. 1329.

Fishing Steamer ROLLIN E. MASON.

SAME

v.

SAME.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

SAME

v.

SAME.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

SAME

v.

SAME.

No. 1332.

Fishing Steamer AMAGANSETT.

SAME

v.

SAME.

Appeals from the District Court of the United States for the District
of Rhode Island.

Before Dodge, Bingham, and Johnson, JJ.

Opinion of the Court.

June 21, 1918.

DODGE, J.:

Maritime liens, asserted by the libellant company upon each of the vessels proceeded against in these cases, for amounts of coal alleged to have been furnished to them respectively during the fishing season of 1914, have been sustained as valid by the District Court. The claimant appeals from the decrees, contending that upon the facts proved the libellant acquired no maritime lien upon either of said vessels.

There is little or no dispute as to the material facts. They are for the most part sufficiently set forth in the opinion below. The *William B. Murray et al.*, 240 F. R. 147.

The libellant had no dealings regarding the furnishing of coal with either of the vessels libelled, through their officers in command; nor did any of its dealings with their owner regarding the coal it

claims to have furnished relate to coal required at the time for use by either of said vessels, or to either of said vessels as distinguished from the other vessels included with them in a "fleet" of nineteen fishing steamers in all. Its dealings were only with the then owner of the entire fleet, referred to in the opinion below as the "Oil Corporation," which corporation was employing the fleet, in connection with lands and fishing factories belonging to it at Promised Land, on Long Island, in New York, and at Tiverton, Rhode Island, in a manufacturing business. At the two above-named places the vessels of the fleet delivered fish taken on their successive trips, and also coaled for further trips.

The libellant did not deliver any of the coal it claims to have furnished, directly to the vessels libelled, or either of them; nor does it appear to have delivered any of said coal to the Oil Corporation directly, either at Promised Land or at Tiverton. The coal for which it claims liens came to those places in five different shipments, on various dates in May, June and July, 1914. Four of said shipments were delivered, as the opinion below states, at Promised Land, and one at Tiverton. But all the shipments came to those places on barges which had taken the coal on board at the libellant's loading piers near New York City, where the libellant had agreed to deliver it under a previous general agreement with the Oil Corporation so to deliver such coal as said corporation might require for its needs at Promised Land and at Tiverton, during said season, at agreed prices per ton; the delivery of all the coal being F. O. B. at said pier. The above facts regarding said shipments from the libellant's piers, not referred to in the opinion below, but appearing from the invoices

and bills of lading relating to the shipments, indicate that
405 delivery of all the coal so shipped to the Oil Corporation took place at the libellant's loading piers. In view of them, we do not think it can be taken as proved that the libellant delivered any of said coal to the Oil Corporation under the above agreement for delivery, either at Promised Land or at Tiverton. But even if such delivery can be taken as proved, there is no question that the coal included in the five cargoes was put on board the barges by the libellant at its New York piers without any understanding that it, or any definite part of it, was for either of the vessels libelled, or for any particular vessel of the fleet, or that all of it was for the vessels then composing the fleet. The first shipment, indeed, was expressly identified on the invoice as "coal for factory." There can be no doubt that, according to the understanding between the parties, some at least of the coal to be furnished would be needed in the factories, and the Oil Corporation was left, so far as any understanding with the libellant was concerned, to use the coal either in the factories or on the vessels of its fleet as it might subsequently desire.

If the libellant can be said to have delivered any of the coal comprised in these five shipments to the Oil Corporation, at Promised Land or at Tiverton, there was still no understanding as to the coal so delivered, or any definite part of it, that it was for either of the vessels libelled, or for all of them, or even for all the vessels in the fleet as distinguished from the factories; and except that the

coal was understood to be for use in its business as carried on at those places, its ultimate disposition was left as above for determination by the Oil Corporation subsequently to the making of the agreement regarding coal for the season, and subsequently to both its shipments and its delivery.

The five shipments were all charged by the libellant on its books to the Oil Corporation, without any entries charging any of it either to a specific vessel, or to specific vessels, or to the fleet; and they were billed to the Oil Corporation only, without any reference to vessels or fleet. When the first shipment to Promised Land arrived there, it was put into the Oil Corporation bins, which already contained

1068 tons previously received and paid for by the Oil Corporation in full, under the same general agreement. The remaining three shipments received at Promised Land were dumped on the same pile, and from the entire pile the Oil Corporation used coal as needed, for all the vessels in its fleet of nineteen, and also for running its boiler plant on shore at that place. The shipment received at Tiverton went upon the Oil Corporation's pier there, and was used by it in part for ten of the vessels belonging to its fleet as they needed it, and in part by its boiler plant on shore at that place. Among the vessels which took on board and used some part of the coal included in the shipments were the five vessels proceeded against in this case.

There was evidence tending to show how much coal each of said vessels took on board at Promised Land out of the entire stock at that place, and how much at Tiverton out of the entire stock there, after the five shipments had been received as above. The District Court determined the quantity of coal subsequently received and used by each vessel libelled, out of the coal included in said shipments, as follows: The respective quantities found to have been taken on board at Promised Land by each of said vessels respectively were reduced by an estimated proportion, being the proportion which the 1068 tons in the pile at Promised Land, before the first of the above shipments to that place had been added thereto, bore to the whole quantity in said pile; after the coal included in said shipments had been added. To the quantities so ascertained were then added the quantities found to have been taken on board by each vessel libelled, at Tiverton.

Whether the libellant has shown itself entitled to maritime liens upon these vessels respectively for the respective amounts of coal thus ascertained is a question to be determined, not between it and the owner at the time of said vessels, but between the libellant and the present claimant, who had nothing to do with the libellant's agreement with the Oil Corporation, nor with the ordering, receiving or using the coal shipped under it as above, and who did not become owner of said vessels until after they had received and used the coal. The Oil Corporation mortgaged its property in 1913, including these vessels, to secure its bonds. A bill to foreclose the mortgage so given had been filed in the same District Court wherein the decree now appealed from was rendered. There was a decree of foreclosure upon said bill, ordering the sale of the

mortgaged property; and under it these and the other vessels of the fleet were sold April 24, 1915, before this suit was begun. The claimant was the purchaser of these vessels at the sale. The present libels were afterwards filed against them on June 16, 1915. While the sale did not divest valid maritime liens to which the vessels were subject when sold, the question of the validity of the liens asserted in this suit is, so far as the present claim is concerned, a question as to the validity of secret or unrecorded encumbrances.

As to the libellant's original agreement with the Oil Corporation to furnish it with coal for the season, it was never completely embodied in any written document. It appeared that when this agreement was made there was a balance due for coal from the previous year, and that the Oil Corporation was known to be largely indebted, in view whereof there was an understanding between the parties to the effect that the latter should have a maritime lien for the coal it was to furnish, not for the above five shipments specifically,—and upon the Oil Corporation's entire fleet or such vessels belonging to it as might thereafter use any of the coal,—not upon any specific vessels included in it. The District Court found it to have been understood by the parties "that the law would afford a lien upon the vessels for the coal and that the Coal Company would thus have security," and also understood that "a large part of the coal furnished was to be used by vessels of the fleet."

A contract cannot afford the necessary basis for a maritime lien unless it is maritime in its nature, so as to be cognizable in admiralty; and it is not enough that the contract is maritime as to some of its provisions, it must be maritime in its entirety. It was long ago said by high authority—

"In cases of a mixed nature it is not a sufficient foundation for admiralty jurisdiction that there are involved some ingredients of a maritime nature. The substance of the whole contract must be maritime."

108 Story, J., in *Plummer v. Webb*, 4 Mason, 380. The principle stated has since been repeatedly recognized and acted on. The following District Court decisions may be cited: *Diefenthal v. Hamburg*, etc., 46 F. R. 397, 399; *Richard v. Hogarth*, 84 F. R. 684; *The James T. Furber*, 129 F. R. 811; 157 F. R. 128; *Berton v. Tietjens etc. Co.*, 219 F. R. 719; also the following decisions on appeal: *Harvey v. Henry*, 86 F. R. 657; *Pacific etc. Co. v. Leatham etc. Co.*, 151 F. R. 440; *The Pennsylvania*, 154 F. R. 9.

Nor, even if the libellant's agreement with the Oil Corporation had covered no coal for factory use and had been an agreement only for the furnishing of such coal as the 19 vessels of its fleet might thereafter require during the season, could it be regarded as maritime in character. It did not "begin and end in the necessities of a particular vessel for a particular vessel for her own voyage" as a contract for supplies must, in order to be within admiralty jurisdiction. "Where owners group together a large number of vessels and make annual contracts for their supplies, the admiralty jurisdiction does not include them because the reason for it does not." *The Oil*

Corporation could not therefore have sued the libellant in admiralty for failure to supply coal according to the agreement, nor could it have sued in admiralty for a refusal to take and pay for coal offered under the agreement. *Diefenthal v. Hamburg, etc.*, 46 F. R. 397, already cited; *S. S. Overdale Co. v. Turner*, 206 F. R. 339.

Part of the agreement is said to have been that the libellant should have the security of a maritime lien for such coal as it should furnish thereunder. It may well be doubted whether, in a contract non-maritime in character as above, a maritime lien for supplies later to be furnished could ever be created by express stipulation therein on the part of the vessel owner. It is at any rate clear, as pointed out in the opinion of the District Court, that no such security could be created upon the entire fleet, irrespective of what use should be made of the coal, nor upon particular vessels of the fleet for coal furnished to the other vessels. *Astor etc. Co. v. E. V. White etc. Co.*, 241 F. R. 57. Whenever maritime liens created by express contract with the owner have been sustained, the agreed liens have been upon vessels or freights specified at the time of the agreement, and for supplies or advances then agreed to be furnished to them specifically upon such specific credit, and afterward so furnished. The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the owner. The general manager of the Oil Corporation testified that, as he understood, a maritime lien on the entire fleet should be security upon which the libellant was to furnish coal, but to such an agreement no effect can be allowed, as has been stated. We regard the evidence as establishing, at most, such an understanding as the District Court found to have existed,—that “the law would afford a lien upon the vessels for the coal.”—that is, according to the libellant’s present contention, upon each vessel afterwards supplied, for the coal supplied to her.

Under the circumstances of this case, the libellant has a lien upon any one of these vessels if it has proved that it “furnished” the coal received by her as above “to the vessel,” upon the order of her owner, within the meaning of the Act of June 23, 1910 (36 Stats. 604); but not in the absence of such proof. This, under the circumstances shown, we consider the only lien which the law afforded it.

Assuming that the libellant can be said, in the case of any one of the vessels, to have “furnished to” her the coal she received, in the statutory sense, the furnishing may be said to have been “upon the order of her owner.” But the question is, whether any such assumption can be made, in view of the facts that after turning over to the owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select, out of the fleet, the particular vessels by which the coal was to be received and used; and to determine the particular part of said quantity to be put on board each such vessel, as well as the particular time for putting it on board.

The Federal statute enlarged the maritime law as it had previously stood, by permitting the acquirement of maritime liens upon vessels, for supplies furnished to them, as well in their home ports
410 as in foreign ports. This it accomplished by providing that proof of furnishing such supplies to a vessel should be sufficient proof of credit given to the vessel therefor,—definite proof of credit so given having always previously been held necessary, whenever what had been furnished had been furnished at the port of the owner's residence. We see no reason to believe that the statute intends the same result to be accomplished without proof that the supplies for which a lien is claimed have been furnished directly to the vessel, and not merely furnished to the owner without definite and distinct reference to her.

When the statute was passed in 1910, no principles of the maritime law of the United States were more fully recognized or more firmly adhered to than those set forth in the familiar statements by the Supreme Court in *Vandewater v. Mills* (*The Yankee Blade*), 19 How. 382, 389, to the effect that maritime liens are stricti juris, because they may operate to the prejudice of general creditors and purchasers without notice, and that they cannot be extended by construction, analogy or inference.

It was also well settled, prior to the statute, that credit given by a material man to a vessel was not proved unless supplies or material intended for her were shown to have been furnished directly to her. While actual delivery by him on board, or (in the case of materials) actual incorporation in, the vessel was not necessary under all circumstances to constitute such direct furnishing by him, mere delivery to the owner without special reference to the particular vessel, was not accepted as sufficient proof; there must have been at least such delivery to the vessel sought to be charged with a maritime lien as would have bound her under a contract of affreightment for transportation of the goods by her. See *The James H. Prentice*, 36 F. R. 777, 781, and cases cited; *The Vigilancia*, 58 F. R. 698, 700, and cases cited; *The Cimbrina*, 156 F. R. 378.

In like manner, it had been held necessary, in order to establish an admiralty lien upon a vessel for maritime services rendered to her, that the services should appear to have been rendered to the particular vessel sought to be charged. Proof that they had
411 been rendered under a contract with her owner for future services to a number of his vessels indiscriminately, at an agreed price per day or for the season, though including the particular vessel, was not accepted as sufficient for the purpose. *The Newport*, 114 F. R. 713; *The Alligator*, 161 F. R. 37. In the latter case it was said by the Court of Appeals for the Third Circuit,—
“A lien does not and should not attach for a supposed credit given to a vessel, unless the services or supplies are clearly shown to have been rendered or furnished to the particular vessel to which credit is given.”

The Statute of 1910 has not, in our opinion, made proof that the supplies for which a maritime lien is claimed were furnished directly to the particular vessel by the material man any less necessary than

before, nor does it afford any ground for attaching any meaning other than that previously recognized to the expression "furnished to a vessel." The decisions made since the statute was passed have insisted upon the same necessity and have given the same effect to the words quoted. See *The Geisha*, *The Bethulia*, 200 F. R. 865, 876; *Astor etc. Co. v. White etc. Co.*, 241 F. R. 47; *The Cora P. White*, 243 F. R. 246

The statute with which we are here concerned must thus be regarded as differing materially in its terms from State statutes purporting to give liens,—which may or may not be maritime liens,—for supplies or materials furnished "for" or "on account of" a vessel, or for materials furnished "in or about, or during, her construction," like the Maine statute considered in *The Kiersage*, 2 Curtis, 421, or the Massachusetts, Michigan and Virginia statutes referred to in *The Geisha*, 200 F. R. 865, 867, 868. In *Berwind-White etc. Co. v. Metropolitan etc. Co.*, 166 F. R. 784; 173 F. R. 271, referred to in the opinion below, the Court of Appeals for this Circuit sustained liens claimed for machinery which had gone into each of two vessels respectively while being constructed, under a single contract to furnish machinery for both, but which did not appropriate any of it specifically to either. The liens so sustained, however, re-

412 lating as they did to construction, were not maritime liens; nor were they asserted in an admiralty court. See 173 F. R. 480. The decision sustaining them, made in an equity suit, gave effect to a New Jersey statute with reference to which the machinery had been contracted for, which statute purported to secure by a lien any debt contracted by the owner of a vessel "on account of" any materials furnished "for or towards the building, repairing, furnishing or equipping such vessel." 166 F. R. 785. But the agreement here relied on must be taken to have had reference to the terms of the above Federal statute, and the parties to have understood that "the law would afford a lien" upon any one vessel of the Oil Corporation fleet for such coal only as might be "furnished to" her according to the accepted meaning of that expression. The question here is whether compliance with the terms of that statute is proved, not whether any underlying equity can be found which might support a lien in the libellant's favor.

We are unable to believe, in view of all the above that the provisions of the statute can properly be understood in the less restricted sense accepted by the District Court, according to which, although the libellant had obtained no lien upon any vessel in the Oil Corporation's fleet when it parted with its coal by delivery to said corporation, liens in its favor might afterward be created by the Oil Corporation's subsequent acts in selecting particular vessels out of said fleet to receive portions of the coal which had been so delivered.

Where specific supplies or materials have been furnished to the owner upon a distinct understanding that they were for a specified vessel and the owner has, after delivery to him, appropriated them to the vessel so designated between the parties, they have been held to have been furnished to her in the sense of the statute; and mari-

time liens for them under it have been sustained. *Ely v. Murray etc. Co.*, 200 F. R. 368; *The Yankee*, 233 F. R. 919.

The Court of Appeals for the Third Circuit was careful, in the case last cited, to limit its decision as follows:—

“We hold that a material man may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from their point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it.”

Further than this no court had gone, in interpreting the provisions of the statute here in question, prior to the decision here appealed from. We are obliged to regard the construction adopted by the court below as one not intended by the statute.

We therefore hold that the District Court erred in sustaining the liens asserted, upon the evidence before it. This conclusion renders it unnecessary to consider certain other errors assigned.

The decree of the District Court is reversed, and the cases are remanded to that court, with instructions to dismiss the libels. The appellant in each case recovers its costs of appeal.

On April 9 and 10, A. D. 1918, these causes came on to be heard together and were fully heard by the court, Honorable Frederic Dodge, Honorable George H. Bingham and Honorable Charles F. Johnson, Circuit Judges, sitting.

Thereafter, to wit, on June 21, A. D. 1918, the opinion of the court (page 403) was announced, and the following Final Decree was entered in each case:—

Final Decree.

June 21, 1918.

This case came on to be heard April 9 and 10, 1918, upon the transcript of record of the District Court of the United States for the District of Rhode Island, and was argued by counsel.

On consideration whereof it is now, to wit, June 21, 1918, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed, and the case is remanded to that court with instructions to dismiss the libel. The appellant recovers its costs of appeal.

By the Court:

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on August 21, 1918, the following Motion to Stay Mandate was filed in each case:—

Motion to Stay Mandate.

[Filed August 21, 1918.]

In the above-entitled cause the Piedmont & Georges Creek Coal Company hereby move that mandate in the above-entitled cause may be stayed pending an application by said appellee for a writ of certiorari to the Supreme Court of the United States.

PIEDMONT & GEORGES CREEK

COAL COMPANY,

By FRANK HEALY, *Proctor for Appellee.*

Providence, Rhode Island, August 21, 1918.

On the same day, to wit, August 21, 1918, the following Order of Court was entered in each case:—

416

Order of Court.

August 21, 1918.

Upon motion of appellee setting forth that it proposes to file a petition in the Supreme Court for a writ of certiorari, it is ordered that the mandate in this case be, and the same hereby is, stayed until further order of court upon the condition that said petition is duly filed and presented within the time prescribed by the rules and practice of the Supreme Court of the United States.

By the Court;

ARTHUR I. CHARRON, *Clerk.*

Clerk's Certificate.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 416, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including August 21, 1918, in the causes in said court numbered and entitled,

No. 1327. Fishing Steamer Walter Adams et al. Seaboard Fisheries Company, Inc., Appellant, v. Piedmont & Georges Creek Coal Company, Appellee.

No. 1328. Fishing Steamer Herbert N. Edwards. Same v. Same.

No. 1329. Fishing Steamer Rollin E. Mason. Same v. Same.

No. 1330. Fishing Steamer William B. Murray. Same v. Same.

No. 1331. Fishing Steamer Martin J. Marran. Same v. Same.

No. 1332. Fishing Steamer Amagansett. Same v. Same.

417

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the

First Circuit, at Boston, in said First Circuit, this twenty-eighth day of August, A. D. 1918.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk*.

418 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the First Circuit, Greeting:

Being informed that there is now pending before you cases wherein Seaboard Fisheries Company, Inc., is appellant, and Piedmont & Georges Creek Coal Company is appellee, Nos. 1327, 1328, 1329, 1330, 1331, and 1332, which suits were removed into the said Circuit Court of Appeals by virtue of appeals from the District Court of the United States for the District of Rhode Island, and we, being willing for certain reasons that the said causes and the record and proceedings therein should be certified by the said Circuit Court of Appeals

and removed into the Supreme Court of the United States, do
419 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said causes, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirty-first day of October, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

420

Return on Writ of Certiorari.

United States Circuit Court of Appeals for the First Circuit.

And now the Judges of the United States Circuit Court of Appeals for the First Circuit make return of this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States No. 675 of October Term, 1918, wherein this writ of certiorari issued, "that the certified transcript of record in the above suits, now on file in the office of the Clerk of the Supreme Court of the United States, be taken as a return to the writ of certiorari herein, dated October 31, 1918."

In testimony whereof, I, Arthur I. Charron, Clerk of said United States Circuit Court of Appeals for the First Circuit hereto set my

hand and affix the seal of said court at Boston, in said First Circuit, this thirteenth day of November, A. D. 1918.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk*.

421 United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1327.

Fishing Steamers WALTER ADAMS et al.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

No. 1328.

Fishing Steamer HERBERT N. EDWARDS.

Same

v.

Same.

No. 1329.

Fishing Steamer ROLLIN E. MASON.

Same

v.

Same.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

Same

v.

Same.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

Same

v.

Same.

No. 1332.

Fishing Steamer AMAGANSETT.

Same

v.

Same.

Stipulation.

(Filed November 13, 1918.)

It is hereby consented that the certified transcript of record in the above suits, now on file in the office of the Clerk of the Supreme Court of the United States, be taken as a return to the writ of certiorari herein, dated October 31, 1918.

November 7, 1918.

GARDNER, PIRCE & THORNLEY,
*Proctors for Seaboard Fisheries
Co., Inc., Appellant.*

FRANK HEALY,
KIRLIN, WOOLSEY & HICKOX,
*Proctors for Piedmont & Georges
Creek Coal Company, Appellee.*

JOHN M. WOOLSEY,
Of Counsel.

A true copy.

Attest:

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk.*

422 [Endorsed:] File No. 26,761. Supreme Court of the United States, October Term, 1918. No. 675. Piedmont & Georges Creek Coal Company vs. Seaboard Fisheries Company, Claimant etc. Writ of Certiorari.

423 [Endorsed:] File No. 26,761. Supreme Court U. S., October Term, 1918. Term No. 675. Piedmont & Georges Creek Coal Company, Petitioner, vs. Seaboard Fisheries Company, Claimant etc. Writ of certiorari and return. Filed November 15, 1918.

No. 6

21

58

FILED

SEP 30 1918

JAMES D. BAYER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No.

PIEDMONT & GEORGES CREEK COAL COMPANY,
Libellant-Petitioner,
against

The Fishing Steamer WALTER ADAMS and others,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer HERBERT N. EDWARDS,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer ROLLIN E. MASON,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer WILLIAM B. MURRAY,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer MARTIN J. MARRAN,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer AMAGANSETT,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

(CONSOLIDATED CASE.)

**PETITION FOR WRIT OF CERTIORARI AND
BRIEF FOR PETITIONER.**

J. PARKER KIRLIN,
JOHN M. WOOLSEY,
F. C. NICODEMUS, Jr.,
Of Counsel.

CONTENTS

	PAGE.
Index of authorities cited.....	iii
NOTICE.	1
PETITION.	3
BRIEF.	23
Statement.	23
(a) Purpose of application.....	23
(b) The facts upon which the petitioner asks the writ of certiorari.....	23
(c) Explanations of the proceedings in the District Court.	29
(d) Decision of the lower courts.....	32
I. The authorities sustain the libellant-petitioner's claim for liens against each vessel to the ex- tent of the coal used by it under the circum- stances of this case.....	37
II. The Lien Act was intended to broaden and in- crease the security of persons furnishing supplies to vessels, not to narrow and cir- cumscribe it, and hence should have an en- lightened construction to meet modern needs.	47

	PAGE.
III. It is not necessary in order to impress a lien that the supplies be actually delivered on board the vessel by the person who supplies them.	48
IV. It is settled law that an owner may by agreement, express or implied, create a lien on his vessel for supplies furnished.	50
V. Agreements for a general lien such as was here shown have frequently had judicial approval.	55
VI. As between the owner of a vessel who agrees to give a maritime lien for money or supplies and the person furnishing the money or supplies on the credit of the vessel, the owner is estopped to deny that the money or supplies were actually used for the vessel.	65
VII. The decision of the Circuit Court of Appeals presents a controverted question of public importance which it is submitted should be settled by this Court.	67

INDEX OF AUTHORITIES CITED.

	PAGE
<i>Advance, The</i> , 63 Fed. 726, 72 Fed. 793.....	59
<i>Alaskan, The</i> , 227 Fed. 594.....	50
<i>Ammon v. The Vigilancia</i> , 58 Fed. 698.....	48
<i>Astor Trust Co. v. White</i> , 241 Fed. 57.....	61
<i>Bellingham Bay Imp. Co. v. Fairhaven, etc., Ry.</i> , 17 Wash. 371	47
<i>Berwind-White C. M. Co. v. Met. S. S. Co.</i> , 166 Fed. 784, 173 Fed. 471.....	17, 18, 35, 39
<i>Cimbria, The</i> , 214 Fed. 128.....	50
<i>Cora P. White, The</i> , 243 Fed. 246.....	41
<i>Cuddy v. Clement</i> , 115 Fed. 301.....	42
Cyc. 26, p. 787.....	63
<i>D. & H. Canal Co. v. The Alida</i> , 23 Betts D. C. Mss. 139, 7 Fed. Cas. 399.....	49
<i>Ella, The</i> , 84 Fed. 471.....	55
<i>Ely v. Murray & Tregurtha Co.</i> , 200 Fed. 369.....	42
<i>Emily Souder, The</i> , 17 Wall. 666.....	55
<i>Erastina, The</i> , 50 Fed. 126.....	58
<i>Farmers' Loan & T. Co. v. Am. Water W. Co.</i> , 107 Fed. 23.....	47
<i>Fortuna, The</i> , 213 Fed. 284.....	51
<i>Freights of The Kate, The</i> , 63 Fed. 707.....	57, 59
<i>George Dumois, The</i> , 68 Fed. 926.....	51
<i>Grapeshot, The</i> , 9 Wall. 129.....	45, 55
<i>Havana, The</i> , 54 Fed. 201.....	55
<i>Hudson v. N. Y. & A. T. Co.</i> , 180 Fed. 973.....	9
<i>J. E. Rumbell, The</i> , 148 U. S. 1.....	59

<i>James, Guy, The</i> , 1 Ben. 112, Fed. Cas. #7195, 9	
Wall, 758, 5 Blatch. 496, Fed. Cas. #7196.....	58, 60
<i>James H. Prentice, The</i> , 30 Fed. 277.....	49
<i>Kalorama, The</i> , 10 Wall. 208.....	50, 55, 58, 64
<i>Kearsarge, The</i> , 1 Ware 546, Fed. Cas. #7634}	17, 18,
<i>Kiersage, The</i> , 2 Curt. 421, Fed. Cas. #7762}	35, 40,
	41, 43, 46
<i>Kimball, The</i> , 3 Wall, 37.....	58
Lien Act of June 23, 1910.....	
4, 6, 9, 14, 19, 23, 37, 41, 42, 46, 47, 48, 50, 52, 67, 68, 71	
Lower Coast Tpn. Co. <i>v.</i> Gulf Ref. Co., 211 Fed.	
336	56
<i>Lucille, The</i> , 208 Fed. 424.....	42
<i>Lulu, The</i> , 10 Wall. 192.....	45
Manhattan Trust Co. <i>v.</i> Sioux City C. Ry., 76 Fed.	
658	47
<i>Mary, The</i> , 1 Paine 671.....	66
<i>Mary Chilton, The Schooner</i> , 4 Fed. 847.....	66
<i>Mary Morgan, The</i> , 28 Fed. 199.....	58
McRae <i>v.</i> Bowers Dredging Co., 86 Fed. 344....	41, 43, 44
Miltenberger <i>v.</i> Logansport R. R. Co., 106 U. S. 286.	47
<i>Minna, The</i> , 11 Fed. 759.....	44
Murphy Tugs, <i>The</i> , 28 Fed. 429.....	41, 43, 44
<i>Newport, The</i> , 107 Fed. 744.....	55
New York Guaranty & I. Co. <i>v.</i> Tacoma Ry. etc.	
Co., 83 Fed. 365.....	47
Oceana, <i>The</i> , 244 Fed. 80.....	47
<i>Patapsco, The</i> , 13 Wall, 329.....	55, 56, 58, 61
<i>Philadelphia, The</i> , 75 Fed. 684.....	54
Reinhart <i>v.</i> Augusta M. & I. Co., 94 Fed. 901.....	47
<i>Robert Dollar, The</i> , 115 Fed. 218.....	66

	PAGE
<i>Rosenthal, The</i> , 57 Fed. 254.....	57
<i>St. Jago de Cuba, The</i> , 9 Wheat. 409.....	62
<i>South Coast, The</i> , 247 Fed. 84.....	52
<i>Southern Ry. v. Carnegie Steel Co.</i> , 76 Fed. 492; 176 U. S. 257.....	47
<i>Stroma, The</i> , 53 Fed. 281.....	58
<i>Surprise, The</i> , 129 Fed. 873.....	54
<i>Thomas v. Western Car Co.</i> , 149 U. S. 95.....	47
<i>United Hyd. C. P. v. Alex. McNeil</i> , Fed. Cas. #14404, 20 Int. Rev. Rec. 175.....	66
<i>Union Trust Co. v. Illinois Midland Co.</i> , 117 U. S. 434	47
<i>Valencia, The</i> , 165 U. S. 264.....	55, 64
<i>Vigilancia, The</i> , 58 Fed. 698.....	63
<i>Virginia & Alabama Coal Co. v. Central R. R.</i> , 170 U. S. 355.....	47
<i>Volunteer, The</i> , 1 Sumn. 551, Fed. Cas. #16991...	58
<i>William B. Murray, The</i> , 240 Fed. 147.....	7, 24
<i>Worthington, The</i> , 133 Fed. 725.....	55, 65, 66
<i>Wyoming, The</i> , 36 Fed. 494.....	65
<i>Yankee, The</i> , 233 Fed. 917. .17, 19, 35, 40, 42, 43, 67, 68, 69	

SUPREME COURT OF THE UNITED STATES.

PIEDMONT & GEORGES CREEK COAL
COMPANY,
Libelant-Appellee,
Petitioner,

AGAINST

Fishing Steamers *Walter Adams*,
et al., Seaboard Fisheries Com-
pany, Inc.,
Claimant-Appellant-
Respondent.

Fishing Steamer *Herbert N.*
Edwards,

SAME *vs.* SAME.

Fishing Steamer *Rollin E. Mason*,

SAME *vs.* SAME.

Fishing Steamer *William B.*
Murray,

SAME *vs.* SAME.

Fishing Steamer *Martin J.*
Marran,

SAME *vs.* SAME.

Fishing Steamer *Amagansett*,

SAME *vs.* SAME.

SIRS :

PLEASE TAKE NOTICE that, in pursuance of sub-division 4 of Rule 37 of the Supreme Court of the United States, the annexed petition for a writ of certiorari, the brief in support thereof, and the certified record of the Circuit Court of Appeals, for the First Circuit herein, were duly filed in the office of the Clerk of the United States Supreme Court within the period prescribed by law; and that this fact will be called to the attention of the Court, and the petition for certiorari submitted at the opening of court on Monday, the 7th of October, 1918, or so soon thereafter as counsel may be heard.

New York, September, 1918.

Yours, &c.,
KIRLIN, WOOLSEY & HICKOX,
FRANK HEALY,
Proctors for Petitioner.

To:

MESSRS. GARDNER, PIRCE & THORNLEY,
MESSRS. SULLIVAN & CROMWELL,
Proctors for Respondent.

SUPREME COURT OF THE UNITED STATES.

PIEDMONT & GEORGES CREEK COAL
COMPANY,
Libelant-Appellee,
Petitioner,

AGAINST

Fishing Steamers *Walter Adams*,
et al., Seaboard Fisheries Com-
pany, Inc.,
Claimant-Appellant-
Respondent.

Fishing Steamer *Herbert N.*
Edwards,

SAME vs. SAME.

Fishing Steamer *Rollin E. Mason*,

SAME vs. SAME.

Fishing Steamer *William B.*
Murray,

SAME vs. SAME.

Fishing Steamer *Martin J.*
Marran,

SAME vs. SAME.

Fishing Steamer *Amagansett*,

SAME vs. SAME.

Petition for
Writ of
Certiorari.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Piedmont & Georges Creek Coal Company respectfully shows to this Honorable Court as follows:

I. This is a petition for a writ of *certiorari* to review a final decision of the Circuit Court of Appeals for the First Circuit made and entered in the said Circuit Court of Appeals on the 21st day of June, 1918, by which the decision of Judge Arthur Brown of the United States District Court for the District of Rhode Island, in favor of this petitioner, was reversed, and it was ordered that the case be remanded to the District Court for the District of Rhode Island with instructions to dismiss the libel.

On motion duly made the issuance of the mandate of the Circuit Court of Appeals was ordered stayed until further order of that Court pending the application for this writ of *certiorari*.

II. The cases were consolidated by order of the District Judge of the District of Rhode Island.

The facts are undisputed and the question which has arisen involves the construction to be put on the Lien Act of June 23, 1910, Ch. 373, 36 Stat. 604,* under the state of facts which will be hereinafter set forth.

* Act of June 23, 1910, c. 373, 36 Stat. 604.

SEC. 1. Any person furnishing repairs, supplies, or other necessities, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a

III. The question to be passed on in this case is whether when it is the undisputed fact that a supplier of coal has furnished coal solely on the agreement by an insolvent shipowner that the supplier shall have a lien on the vessels of the owner's fleet for such coal as is furnished, the ship owner or the ship owner's mortgagee can defeat liens claimed by the coal supplier on individual vessels of the fleet for coal actually used by such vessels because the coal was first delivered to the ship owner who apportioned it among his vessels as was convenient.

In other words why cannot a coal supplier follow his coal through the ship owner's bins to the ship owner's vessels and maintain a lien on the vessels when it is agreed that the supplier shall have such a lien although

maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

Sec. 2. The following persons shall be presumed to have authority from the owner or owners to procure repairs, supplies, and other necessities for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Sec. 3. The officers and agents of a vessel specified in section two shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel, but nothing in this Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

Sec. 4. Nothing in this Act shall be construed to prevent a furnisher of repairs, supplies, or other necessities from waiving his right to a lien at any time, by agreement or otherwise, and this Act shall not be construed to affect the rules of law now existing, either in regard to the right to proceed against a vessel for advances, or in regard to laches in the enforcement of liens on vessels, or in regard to the priority or rank of liens, or in regard to the right to proceed in personam.

Sec. 5. This Act shall supersede the provisions of all state statutes conferring liens on vessels in so far as the same purport to create rights of action to be enforced by proceedings in rem against vessels for repairs, supplies, and other necessities.

the coal is not delivered directly to the several vessels by the supplier?

The District Judge took a broad view of the statute and construed it so as to make it applicable to modern conditions of furnishing coal and other necessities to vessels. He sustained liens against each vessel for the coal each vessel had used.

The Circuit Court of Appeals reversed the decision of the District Judge, held the liens were not maintainable because the distribution of the coal among the several vessels had been left to the shipowner. In so holding, the Circuit Court of Appeals took a view of the statute which is extremely narrow, and renders the statute practically inoperative in many situations which arise under the modern practice of furnishing necessities to vessels, and which the petitioner believes were intended to be covered by the statute.

The question, therefore, is one of considerable public importance especially at a time when persons furnishing necessities to ships should be specially safeguarded in their security in order that there shall not be any difficulty or delay in securing coal and other necessities for vessels.

The petitioner is advised that although the Lien Act of June 23, 1910, is one of the most important statutes having to do with maritime affairs, it has never been before this Court for construction.

IV.—*Explanation of the Proceedings.*

These are consolidated causes consisting of a series of libels brought by the Piedmont & Georges Creek Coal Company, a Maryland corporation, hereinafter referred to as the Coal Company, against the Fishing Steamers *William B. Murray*, *Rollin E. Mason*, *Herbert N. Edwards*, *Martin J. Marran*, *Amagansett*, *Walter Adams*, *Alaska*, *Arizona*, *George Curtiss*, *Montauk*, *Quickstep*, and *Ranger*, hereinafter called the Fishing Steamers, to recover the sum of \$17,850.75 with interest, for coal furnished on the credit of the said fishing steamers at the request of their then owner, The Atlantic Phosphate & Oil Corporation, hereinafter referred to as the Oil Corporation, during the fishing season of 1914.

The decision of the District Court is reported as *The William B. Murray, et al.*, 240 Fed. 147. The decision of the Circuit Court of Appeals has not been reported.

The coal in question had been furnished in boat load lots for use by the Oil Corporation's steamers to two coaling stations of the Oil Corporation,—one at Promised Land, Long Island, and one at Tiverton, Rhode Island, on an agreement that the coal company should have a lien therefor on all the vessels of the Oil Corporation's fleet. *Record*, pp. 31, 47, 92.

The first appearance of the appellee herein was by way of intervening libels or petitions in five libels theretofore filed against five vessels, the *Edwards*, the *Murray*, the *Marran*, the *Mason*, and the *Amagansett*, which were then under arrest in libels brought by other parties and against which the Oil Corporation had requested the libellant to enforce its lien instead of libelling the whole fleet.

These five intervening libels came on for trial on June 14, 1915, and testimony was taken on that date in open court.

The five libels mentioned each contained two counts:

1. For a share of the general lien indebtedness of the fleet to the libelant which the Oil Corporation had asked the libelant to enforce against these five vessels and

2. *For the coal actually used by the particular vessel libeled.* *Libels*, pp. 2, 3, 203, 204, 249, 250, 287, 288, 325, 326, 363, 364; *Horton*, p. 73.

During the progress of the trial the District Judge expressed doubt as to the feasibility of holding five vessels for supplies furnished to vessels other than those libelled. *Record*, p. 75. The appellee thereupon libeled the seven other fishing steamers above mentioned which were the only other vessels of the fleet then within reach of process. *Record*, p. 1.

On June 21, 1915, on motion, which was contested, leave was granted the libelant to sever the intervening libels or petitions filed in the first five causes from their principal proceedings and to consolidate the said five petitions with the new libel. An appropriate order was duly entered in each of the five causes first mentioned and in the new cause. *Record*, pp. 217, 260, 298, 336, 374.

Thereafter, by stipulation, the testimony which had been taken in the five libels was put into the consolidated cause, with certain additional facts and testimony duly set forth. *Record*, pp. 93, 94, 95.

The consolidated causes, therefore, consist of libels against all the fishing vessels of the fleet of the Oil Cor-

poration which were then available within the jurisdiction of the District Court when the proceedings were begun. *Record*, pp. 93, 94, 95.

All the vessels included within this consolidated cause were described in and subject to a certain mortgage or deed of trust given by the Oil Corporation to the Astor Trust Co., as trustee, bearing date July 1, 1913. *Record*, pp. 93, 94, 95.

On December 29th, 1914, the Astor Trust Co., as trustee, filed a bill of complaint praying foreclosure and sale under said mortgage and on March 8, 1915, a decree of foreclosure and sale was duly entered. *Record*, pp. 93, 94, 95.

On April 24, 1915, all the vessels included in this libel were sold at public auction by the *receivers* of the Oil Corporation and were purchased by the claimant-appellant herein and were duly transferred to it on May 29, 1915. *Agreed state of facts, Record*, pp. 93, 94, 95.

As this sale was not the result of a proceeding *in rem*, it did not cut off the libellant's liens, *Hudson v. N. Y. & Albany Trust Co. &c.*, 180 Fed. 973, C. C. A., 2nd Circuit, and is mentioned only that the Court may have the entire background of the proceedings before it.

V. *The District Judge correctly ruled that the coal furnished to the Oil Corporation for use on its vessels constituted supplies furnished to those vessels within the meaning of the Lien Act of June 23, 1910, for which a maritime lien for the coal actually used by each vessel might be enforced by a proceeding in rem against that vessel. The Court of Appeals erred in ruling otherwise.*

The facts are simple and are not disputed by any evidence on behalf of the claimant.

In February, 1914, the Oil Corporation was indebted to the Coal Company in the sum of \$3800 for which indebtedness, sometime in the summer of 1913, a note secured by bonds of the Oil Corporation was given. *Meadows*, Q. 8; *Brophy*, Q. 5.

At that time the Oil Corporation had between \$75,000 and \$100,000 of overdue accounts payable on their books owing to their various creditors, which dated back to the previous year, and which it was unable to pay. *Meadows*, Q. 9.

It was on the verge of a receivership and existed as a going concern only by the sufferance of its creditors. *Meadows*, Q. 10, 11. These facts were known to the Coal Company, *Meadows*, Q. 15, *et. seq.*; *Brophy*, Q. 63, 65, whose president had issued orders not to extend any further credit to the Oil Corporation. *Brophy*, Q. 66.

The Coal Company tried unsuccessfully to collect from the Oil Corporation the balance due from 1913. *Meadows*, Q. 15.

The Oil Corporation had a total of nineteen fishing vessels in their fleet, all of which consumed coal, and it was necessary that coal be obtained in order that their vessels might continue in operation to secure fish to be made into oil at the company's plants. *Meadows*, Q. 12, 13, 14. They tried to obtain coal from the Coal Company by giving as collateral certain bonds of the Oil Corporation held in their treasury unsold, *Meadows*, Q. 17, 18, 19, but

the Coal Company was unwilling to make a contract based on the bonds as the only security. *Meadows*, Q. 17, 18, 19.

Some time in the latter part of February or the early part of March, 1914, Mr. Bohannon, the New York representative of the Coal Company, had a conversation with Mr. Meadows, the Vice President of the Oil Corporation, in the course of which Mr. Meadows told Mr. Bohannon that his understanding of the law was that the Oil Corporation had a perfect right to pledge the credit of the steamers, themselves, in order to obtain coal with which to operate them, and that if the Coal Company would furnish coal, the Oil Corporation would be willing to secure such deliveries by a maritime lien on all their steamers. *Meadows*, Q. 20, 21, 22, 23, 24. No formal writing evidenced the undertaking, but subsequent letters were exchanged which referred to an agreement or understanding and which conclusively proved that the matter was thoroughly understood by both parties. *Libelant's Exhibits* 1, 2, 3, 4, 5, 6; *Meadows*, Q. 25-31; *Meadows*, Recalled, Q. 12.

The agreement to furnish coal, therefore, was entered into upon the express understanding that for the coal furnished the libelant would get a maritime lien upon all the steamers owned by the Oil Corporation. *Meadows*, Q. 23; *Brophy*, Q. 69, 70.

Nine cargoes of coal were furnished by the Coal Company in pursuance of this agreement. *Meadows*, Q. 25, 26, 27. Of the nine shipments, only two were paid for. *Meadows*, Q. 31, *Brophy*, C.Q. 83, 84. They were the third and fourth shipments made under this agreement, *Meadows*, Q. 32; *Brophy*, C.Q. 83, 84, and the sum paid was \$3,524.40 for 1,968 tons delivered at Promised Land. *Meadows*, Q. 31.

For the first two cargoes shipped under this agreement notes were given, to which bonds of the Oil Corporation were attached as collateral, *Meadows*, Q. 43. These notes were discounted at a bank by the Coal Company, thus permitting them to have the use of the money represented by the two cargoes in question, *Meadows*, Q. 35, 37.

The last five cargoes shipped under this agreement, which contained the coal involved in this case, were delivered in the months of May and June with specific dates for cash settlement stipulated. No notes were given for these. They were furnished solely in reliance on the agreement to give a maritime lien on the fleet as security for them. The coal covered by these five shipments has not been paid for. *Meadows*, Q. 38, 39 .

When the bills for the last five shipments became due and were not paid in due course and on demand being duly made, the Oil Corporation earnestly requested the Coal Company not to enforce its lien for a few days, and the Coal Company complied with this request, realizing that any summary action on its part would result in a collapse of the Oil Corporation. *Meadows*, Q. 44, 45, 46.

During this period of forbearance, the Oil Corporation went into the hands of a receiver.

Among the vessels belonging to the fleet upon all of which it was agreed that the libellant should enforce its maritime lien were the *Edwards*, the *Mason*, the *Mar-ran*, the *Amagansett* and the *Murray*, which were considered the best of the ships. *Meadows*, Q. 44, 45, 46, *Libellant's Exhibits* 2 and 3. At the solicitation of the

Oil Corporation the Coal Company consented to enforce a lien for the coal unpaid for against these five best boats, because all parties considered that a sale of these five would bring sufficient money to pay the lien claim. *Meadows*, Q. 45.

The situation, in so far as the libelant's lien on the entire fleet was concerned, was not changed in any particular by its proceeding against five vessels for security for its claim, *Meadows*, 48, because by so doing, it permitted the balance of the fleet to operate.

It was felt that this might result in the Oil Corporation regaining its solvency. For there is an element of luck or chance in a fishing venture, and an unusual catch of oil-yielding fish might have saved this business, then top-heavy with liabilities.

Judge Brown, in his opinion, at page 128 of the *Record*, analyses the situation succinctly as follows:

"I am of the opinion that the testimony shows that before the writing of the letters, *Exhibits* 8 and 9, the financial ability of the Oil Corporation to pay was discussed; and that it was understood by the contracting parties that the law would afford a lien upon the vessels for the coal, and that the Coal Company would thus have security. It was also understood by the parties that a large part of the coal furnished was to be used by vessels of the fleet.

"The Statute of June 23, 1910, gives no authority for the creation of a maritime lien on vessels to which coal was not to be furnished. An agreement that certain vessels should be charged with a lien for coal furnished to other vessels could have no effect to create a maritime lien which

should take precedence of an existing mortgage. Even if the Coal Company expected that it was getting security upon the entire fleet irrespective of what use should be made of the coal, this was an erroneous conception of legal rights. However, it seems just to hold that the parties contracted in view of the fact that the statute afforded a right to a maritime lien, and that even if they misconceived the extent of this right or the mode of its enforcement, the libellant may be entitled to such a maritime lien as may arise under the statute upon the facts of the case.

“That bills were made out and charges made to owners, or that notes were given, does not destroy the lien given by the act of June 23, 1910. The parties must be presumed to have contracted with so important a provision in mind; and though it might be a defense that the lien has been waived, we should require satisfactory and definite proof of such intention in order to deprive the libellant of such security as may be afforded by the statute.

“As it appears from the testimony that the contract covering the coal in question was made at a time when it was known to the libellant that the Oil Corporation was still in arrears for coal for the preceding year, and was otherwise heavily indebted, and that receivership proceedings were contemplated, it is quite clear that the libellant had no intention to waive any of its legal rights to a maritime lien.”

It is perfectly clear that on the facts in this case, which are undisputed, the District Judge was correct in his ruling, on page 132, where he said:

“I find, therefore, that in contracting for this coal it was understood by both parties that it was to be principally used for strictly maritime pur-

poses; that a large part of it was used for such purposes; and that the parties contracted in view of statutory rights to a lien.

“It may be argued that when coal is delivered to bins on the wharf of a purchaser, who may use it as he pleases, on such of his ships as he may select, or upon land if he prefers, that the coal is furnished to the owner and not to a vessel. But such an argument upon the evidence in this case ignores the material fact that it was understood by both parties that the coal was procured and supplied largely for uses which were strictly maritime.

“Doubtless a very substantial part of the inducement to the Coal Company to supply the coal was its knowledge of its intended use, by vessels, for maritime purposes, and its understanding that the law gave it a lien for coal supplied for such purposes. Upon the facts in this case it is most improbable that the coal would have been supplied to the owner and upon the owner’s very doubtful credit.

“I find that it was furnished because it was destined and intended to be used, in large part, by vessels; and that in the sense of the statute it was therefore furnished to vessels upon the faith of a lien thereon, and not to the owner.”

Again, on page 134, the District Judge deals most properly with the question of sustaining maritime liens for supplies furnished to fleets: [*Italics ours.*]

“As supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet; as supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels;

as, at the time supplies are ordered, there may be uncertainty as to which vessel may require them and use them; *the statute should receive a construction which will make it applicable to and consistent with modern business conditions.* A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of the vessel which is to require the supplies.

“The appropriation of the coal to a particular vessel, though made by the owner, yet, if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a ‘furnishing’ by the libellant to ‘a vessel,’ which is identified by the act of the owner in placing the coal aboard.

“Cases which hold that supplies may be furnished to a vessel though not actually incorporated in or used by the vessel have no bearing in this case. While use and appropriation may not, in all cases, be necessary to make out a case of furnishing to a vessel, it does not follow that they may not afford conclusive evidence of the identity of a vessel and of the completion of a maritime lien thereon.

“But the question of the effect of an appropriation to a particular vessel I regard as settled by the decisions of Mr. Justice Curtis, and Judge Putnam, heretofore cited. In these cases it was at the outset uncertain which of two vessels might receive the supplies. In the present case it was uncertain which vessels of a fleet might receive them; but in this case, as in the cases cited, the uncertainty ended upon the owner’s appropriation of the coal to special vessels.

“Following the decisions of Justice Curtis in *The Kearsarge*, 2 Curtis 421, Fed. Cs. No. 7762,

and of Judge Putnam in *Berwind-White Coal Mining Co. vs. Metropolitan S. S. Co.*, 166 Fed., 784, I am of the opinion that for such coal as actually went into any vessels of the fleet the libellant is entitled to a maritime lien, upon such vessel; but that there can be no lien upon one vessel for coal supplied to another vessel. See also *The Yankee*, 233 Fed., 917, 927."

The Circuit Court of Appeals admitted that there was little or no dispute as to the material facts, and that those facts were for the most part set forth in the opinion of the Judge. Record, p. 404.

It differed with him, however, as to the conclusions to be drawn from the facts. It held because some of the coal was for use at the factory of the Oil Corporation, Record, p. 405, the fact that most of it was used for the vessels, under an agreement that there should be a lien on the vessels, did not bring the case within the admiralty jurisdiction. PP. 407-8.

It further held that an agreement between a coal supplier and a ship owner to furnish coal for a fleet during a season, would not be regarded as maritime, and that, consequently, it would be very doubtful whether a maritime lien, by agreement, could be created for coal so furnished. P. 408.

This part of the Court's opinion is *obiter dictum*. The District Court had held that no maritime lien could be created apart from the statute, and gave a decree on the second count of the libels, wholly rejecting the first count. No cross appeal was taken by the libellant, and the only question before the Circuit Court of Appeals was whether in view of the understanding of the parties that the coal was furnished on the credit of the vessels

and not on the credit of the owner a lien was impressed upon the libeled vessels by force of the statute.

Judge Dodge, after discussing the questions, which would have arisen if the District Court had sustained the first count of each libel instead of the second count, proceeded to the construction of the statute, and said that the libelant-petitioner had not proved that it had furnished any coal to a vessel within the meaning of Section 1 of the statute, and that as it had not proved this, there could not be any liens against the several boats who used the libelant's coal.

It differentiated the cases of *The Kiersage*, 2 Curtis, 421; and the *Berwind-White etc. Co. v. Metropolitan etc. Co.*, 166 Fed., 784; 173 Fed. 271; on the ground that the statutes of Maine and of New Jersey, referred to in those cases, were statutes giving liens in connection with the construction of vessels, and hence not maritime.

The opinion concluded, p. 412,

“We are unable to believe, in view of all the above, that the provisions of the statute can properly be understood in the less restricted sense accepted by the District Court, according to which, although the libelant had obtained no lien upon any vessel in the Oil Corporation's fleet when it parted with its coal by delivery to said corporation, liens in its favor might afterward be created by the Oil Corporation's subsequent acts in selecting particular vessels out of said fleet to receive portions of the coal which had been so delivered.”

It is difficult to see why, in view of the agreement that the libelant petitioner should have liens for the coal furnished for use on the Oil Corporation's fleet, it should

not have been held that the Oil Corporation, in delivering the coal in pursuance of this agreement to the different vessels so acting as the agent of the libellant-petitioner, and hence that the libellant-petitioner was entitled to trace the coal which it furnished for use of the fleet into the particular vessels of the fleet which used it, and sustain liens against them for the amount that each used.

It is submitted that the District Judge was right in sustaining the liens and that the Circuit Court of Appeals was clearly wrong and that its decision conflicts with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *The Yankee*, 233 Fed. Rep., 919.

VI. Your petitioner is informed and believes that the case involves questions of gravity and importance in admiralty law in regard to the construction and application of the Lien Act of June 23, 1910 which have never been passed on by this court.

These questions are of great importance to the suppliers of coal and other necessities to ships under modern conditions, especially at the present time, and the decisions of the various Circuits seem to be at variance in regard to them.

The case should, therefore, it is submitted, receive the consideration of this Court.

VII. The petitioner has duly filed herewith a certified copy of the record and all proceedings in the Circuit Court of Appeals and prays that the same may be reviewed by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the United States Circuit

Court of Appeals for the First Circuit commanding said Court to certify and send to this Court on a day to be designated in said writ a full and complete certified transcript of the record and all proceedings in the said Circuit Court of Appeals in the said consolidated cases which were entitled in the said Circuit Court of Appeals for the First Circuit: No. 1327, *Fishing Steamers Walter Adams et al. Seaboard Fisheries Company, Inc., Appellant, v. Piedmont & Georges Creek Coal Company, Appellee*; No. 1328, *Fishing Steamer Herbert N. Edwards, Same v. Same*; No. 1329, *Fishing Steamer Rollin E. Mason, Same v. Same*; No. 1330, *Fishing Steamer William B. Murray, Same v. Same*; No. 1331, *Fishing Steamer Martin J. Marran, Same v. Same*; No. 1332, *Fishing Steamer Amagansett, Same v. Same*, to the end that the said consolidated cases may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Court of Appeals and to define and regulate in certain cases the Jurisdiction of the Courts of the United States and for other purposes, approved March 3, 1891, and the acts amendatory thereof and supplementary thereto, or that your petitioner may have such other and further relief and remedy in the premises as to this Court may seem proper and in conformity with the said Act; and that the decision or decree of the Circuit Court of Appeals for the First Circuit, reversing the decision or decree of the District Court for the District of Rhode Island and ordering that the libels in the consolidated cases should be dismissed may be reviewed in this Court and reversed.

And your petitioner will ever pray.

PIEDMONT & GEORGES CREEK COAL COMPANY,

By

KIRLIN, WOOLSEY & HICKOX,
Attorneys.

J. PARKER KIRLIN,

JOHN M. WOOLSEY,

F. C. NICODEMUS, JR.,

Counsel for Petitioner.

STATE OF NEW YORK,) ss.:
County of New York,)

MARK W. MACLAY, being duly sworn, says:

I am a member of the firm of Kirlin, Woolsey & Hickox, attorneys for the petitioner herein.

The foregoing petition is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the petitioner is that it is a corporation, and the reason it is not made by one of its officers is that none of its officers is within this District.

This application is made in good faith and not for the purpose of delay.

MARK W. MACLAY, *jr*

Sworn to before me this 10th
day of September, 1918.)

P. RANDOLPH HARRIS,

Notary Public,

New York County.

CERTIFICATE.

I HEREBY CERTIFY that I have examined the foregoing petition and that, in my opinion, it is well founded and entitled to the favorable consideration of this Court.

JOHN M. WOOLSEY.

SUPREME COURT OF THE UNITED STATES.

PIEDMONT & GEORGES CREEK COAL
COMPANY,
Libelant-Appellee,
Petitioner,

AGAINST

Fishing Steamers *Walter Adams*,
et al., Seaboard Fisheries Com-
pany, Inc.,
Claimant-Appellant-
Respondent.

Fishing Steamer *Herbert N.*
Edwards,

SAME *vs.* SAME.

Fishing Steamer *Rollin E. Mason*,

SAME *vs.* SAME.

Fishing Steamer *William B.*
Murray,

SAME *vs.* SAME.

Fishing Steamer *Martin J.*
Marran,

SAME *vs.* SAME.

Fishing Steamer *Amagansett*,

SAME *vs.* SAME.

BRIEF FOR PETITIONER ON APPLICATION
FOR WRIT OF CERTIORARI.

The facts are quite fully set forth in the petition for certiorari with which this brief is submitted but a further discussion of them may be helpful.

The facts are not in dispute, and this Court is not asked by this petition to pass on any question of facts.

It is asked to decide a question of the construction of the Lien Act of June 23, 1910, as applied to the circumstances set forth in the petition.

STATEMENT.

(a) *Purpose of Application.*

The petitioner, the libellant in the District Court for the District of Rhode Island and the prevailing party in the District Court, applies to this Court for a writ of certiorari to review a decision of the Circuit Court of Appeals for the First Circuit (opinion written by Judge Dodge) which the petitioner contends places an erroneous and subversive construction on the act of Congress of June 23, 1910, 36 stat. 604 governing Maritime Liens, rendering the statute inoperative in an important class of cases it was intended to reach.

(b) *The facts upon which the petitioner asks the writ of certiorari.*

As stated by Judge Dodge at the outset of his opinion written for the Circuit Court of Appeals:

“There is little or no dispute as to the material facts. They are for the most part suffi-

ciently set forth in the opinion below. *The William B. Murray et al.* 240 F. R. 147."

For a full statement of all of the facts in evidence reference may be made to the opinion of the District Court, as well as to the opinion of Judge Dodge. Much that is stated in Judge Dodge's opinion is, however, inaccurate in detail and in any event does not bear upon the construction of the act of Congress and is not material upon the present application. The facts upon which the Circuit Court of Appeals considered the Act of Congress and reached the determination which the petitioner asks this Court to review are undisputed and may be briefly stated.

The Atlantic Phosphate & Oil Corporation, a body corporate created under the laws of New York (herein called the Oil Corporation) owned and operated on the Atlantic Seaboard a fleet of 19 steam fishing vessels of which 17 were actually in service at the time of the transaction involved in this litigation. The fleet had its principal bases at Tiverton, Rhode Island and Promised Land, New York, where factories of the Oil Corporation were located and where its vessels came from time to time to take on supplies.

All the property of the Oil Corporation, including its fleet of vessels above mentioned, was subject to the lien of a mortgage to the Astor Trust Company as Trustee securing an issue of bonds which were outstanding when the Oil Corporation and the Petitioner entered into the arrangement underlying the present proceeding.

The mortgage was foreclosed under a decree dated March 8, 1915, and the vessels were purchased by the claimant, subject to any valid maritime liens thereon held by the Petitioner.

The maritime liens asserted by the Petitioner rest upon the following facts:

In 1913 and 1914 the Oil Corporation being largely indebted upon overdue open accounts and defaulted notes secured by its own bonds as collateral, was on the verge of a receivership and existed as a going concern only by the sufferance of its creditors; it was unable to obtain upon its own credit the coal and other supplies necessary to keep its fleet of vessels at sea. Desiring to avert the loss incident to a complete cessation of operations, it applied to the Petitioner for coal, offering to give its note for the purchase price secured by bonds issued under its above mentioned mortgage to the Astor Trust Company. Inasmuch, however, as the Petitioner already held certain collateral notes of the Oil Corporation which were overdue and unpaid, it rejected the Oil Corporation's proposal and thereupon the Oil Corporation suggested to Mr. Bohannon, the Petitioner's Manager of Sales, that the coal be furnished upon the credit of its vessels.

In this connection we quote the following from the testimony of Mr. Thomas C. Meadows, Vice President and General Manager of the Oil Corporation:

"Q. 15. Did Mr. Bohannon call on you any time during February, 1914, in an attempt either to collect this balance or make some working arrangements with you in regard to it?

Ans. He called regarding his account. I endeavored to make an arrangement with him for coal for the succeeding season.

Q. 16. Did you take up the question of coal for the season of 1914?

Ans. I did.

Q. 17. What did you offer him with regard to that coal, in your first proposition?

Ans. I told him that the company still had some of the bonds in its treasury such as had been pledged to secure his previous year's account, and on purchases for the year 1914 if he would be satisfied with those bonds as collateral we could give them as security.

Q. 18. What was Mr. Bohannon's reply to you? Did he have to refer back to some one?

Ans. He said he would refer it to Mr. Brophy, the president of the Company.

Q. 19. Did you afterwards see Mr. Bohannon?

Ans. Yes. Mr. Bohannon returned some two weeks later, I think, and reported Mr. Brophy was not willing to make a contract based on the bonds as the only security.

Q. 20. What further transpired?

Ans. I told him, as I understood the law, that we had a perfect right to use the credit of the steamers in the acquisition of coal and if he would be willing to furnish coal we would be perfectly willing that he hold and maintain a maritime lien on the steamers.

Q. 21. Was that of the entire fleet?

Ans. Yes; on all the boats.

Q. 22. Well, what happened thereafter?

Ans. He referred that to Mr. Brophy and Mr. Brophy accepted the proposition on that basis.

Q. 23. That was a maritime lien on your entire fleet should be security on which he was to furnish coal?

Ans. Yes.

Q. 24. That was your understanding of it?

Ans. That was my understanding of it''.

Pursuant to the above arrangement and in reliance upon the Act of Congress, the Petitioner delivered to the Oil Corporation, primarily if not exclusively, for the use of its 17 fishing vessels then in service and in order to enable it to keep its said vessels afloat 5320 tons of coal of the agreed value of \$17,854.27.

The coal was shipped at the expense of the Petitioner by rail to railway terminal points at St. George, Staten Island and Port Reading, New Jersey, where it was placed by the rail carrier upon barges belonging to the Oil Corporation. These barges were floated to Tiverton, Rhode Island, and Promised Land, New York, where the coal was dumped in the bins for distribution among the vessels of the Oil Corporation's fleet arriving from time to time to take on supplies. The petitioner did not control or direct the distribution of the coal, but merely undertook to replenish the bins at Tiverton and Promised Land on orders sent to it from time to time by the Oil Corporation, leaving the distribution of the coal to the agency of the Oil Corporation, itself. Thus under date of June 16, 1914, the Oil Corporation writes to the petitioner as follows:

"We are just advised by our Tiverton plant that their supply of coal has been pretty well exhausted in starting the boats out and that they can use another cargo of about 700 tons whenever it

suits your convenience to ship it to them. You may therefore consider this as an order for such a cargo when it is convenient for you to make the delivery”.

Certain of the coal was used by vessels which the petitioner was unable to serve with process and a relatively small amount was used in the Oil Corporation's boilers at Promised Land and Tiverton and as to that coal, it is conceded that the petitioner either lost or failed to perfect its maritime lien; but the balance of the coal was duly distributed among and actually used by libelled vessels as follows:

<i>Name of Vessel</i>	<i>Tons</i>	<i>Contract Price</i>
Walter Adams	121.25	\$408.16
Alaska	417.25	1421.81
Arizona	35.00	114.80
George Curtiss	229.50	769.92
Montauk	177.50	608.76
Quickstep	19.00	62.32
Ranger	337.50	1146.72
Herbert M. Edwards	429.00	1390.72
Roland E. Mason	452.00	1554.47
William B. Murray	406.75	1389.95
Martin J. Marran	292.75	979.84
Amagansett	492.00	1613.75
Total	3509.50	\$11461.22

The District Court sustained the libels against the above mentioned vessels and awarded decrees for the value of the coal delivered to and used by each of them, the several decrees with interest and costs amounting as of November 1st, 1917 to \$14,134.43.

(c) *Explanation of proceedings in the District Court.*

The invoices of the petitioner for the coal sold and delivered as aforesaid were not paid when they fell due, whereupon Mr. Brophy, representing the petitioner, came to New York for the purpose of enforcing collection by proceedings against the Oil Corporation's vessels. He called to see Mr. Meadows, Vice President of the Oil Corporation who persuaded him to delay action and the matter was held in abeyance until it became apparent that the Oil Corporation would pass into receivership. Mr. Brophy then again conferred with Mr. Meadows "who prevailed upon him to exclude from his action he was threatening to bring as many of the boats as he was willing to exclude so that we (the Oil Corporation) might have something to operate with even though he tied up part of the fleet."

Both Mr. Meadows and Mr. Brophy were obviously of the opinion that the petitioner held a joint and several lien against all vessels of the fleet and at Mr. Meadow's solicitation Mr. Brophy without waiving or intending to waive any lien or claim against the other vessels "selected the 5 best boats as ample security for his claim" and the amount due for the 5 cargoes of coal was apportioned on the records of the Oil Corporation among the 5 selected vessels arbitrarily and without regard to the amount of coal actually furnished to each vessel. Mr. Meadows testified on this point as follows:

"Q. 46. What was done in regard to making a record of the selection of these five boats as the boats against which the liens were to be impressed?

Ans. There was letters exchanged in which we

specifically recognize our obligation and our agreement with these gentlemen that prior liens did exist, and those were selected as five boats that the liens should be enforced against if he saw fit to bring action, and in that letter there was some approximate statement as to the total amount of other liens that existed against these five boats.

Mr. Woolsey: Have you got the letter of September 11, our original letter, to the Atlantic Phosphate & Oil Company?

Mr. Thornley: Yes, sir.

Mr. Woolsey: May I have that? I will give you a copy in return. And there are also one or two other letters, Mr. Thornley—the letter of June 26th, the letter of July 15th.

Q. 47. Had you seen Mr. Brophy at New York prior to his writing you the letter in September, that you speak of?

Ans. Yes; I think he had been there.

Q. 48. Well, had there been any record made on your books as to the boats to be chargeable for these liens, the boats against which the liens were to be impressed?

Ans. There had been no singling out of vessels, nothing except the entire fleet had been referred to prior to his visit.

Q. 49. Then, what was done in regard to making a record as to these five boats against which the proceedings were to be enforced?

Ans. Well, following his conference it was agreed that he should have his invoices billed, one invoice against one of the five new boats which we recognized as the best boats.

Q. 50. Will you tell the Judge what happened, how this was done?

Ans. Mr. Bohannon came to the office with the invoices made out as Mr. Brophy and I had agreed they should be made out.

Q. 51. In the same proportion as contained in these libels?

Ans. Yes; just as they are in the libels. When we came to substitute them for the existing invoices which had already been rendered we found on the existing invoices the bookkeeper's notations, the stamps with the "O. K." with the different initials on them, and we realized that an effort would have to be made to reproduce those, but instead of doing that the bill heads were simply torn out and pasted to the original invoices.

Q. 52. Do you remember the date of this?

Ans. I think it was either the early part of September or the end of August".

In October 1914 receivers were appointed for the Oil Corporation and some months later the petitioner filed intervening libels against five of the Oil Corporation's vessels, each of the libels containing two counts:

(1) A count for the value of the coal allocated to the vessel on the books of the Oil Corporation and

(2) A count for the value of the coal actually furnished to and used by the libelled vessel.

During the progress of the trial the District Court expressed a doubt as to the feasibility of holding any one of the five vessels liable for coal not actually used by it, but used by other vessels of the fleet and thereupon the petitioner libelled seven other vessels of the fleet which were the only vessels then within reach of process.

All of the twelve libels were consolidated and proof was taken establishing with mathematical certainty the amount of coal actually furnished to each one of the twelve libelled vessels.

(d) *Decision of the Lower Courts.*

On proof of the amount of coal furnished to and used by each of the libelled vessels the District Court found no difficulty in sustaining each libel to the extent of the value of the coal so furnished. We quote the following from Judge Brown's opinion:

"I find, therefore, that in contracting for this coal it was understood by both parties that it was to be principally used for strictly maritime purposes, that a large part of it was used for such purposes, and that the parties contracted in view of statutory rights to a lien.

"It may be argued that when coal is delivered to bins on the wharf of a purchaser, who may use it as he pleases, on such of his ships as he may select, or upon land, if he prefers, that the coal is furnished to the owner and not to a vessel. But such an argument upon the evidence in this case ignores the material fact that it was understood by both parties that the coal was procured and supplied largely for uses which were strictly maritime.

"Doubtless a very substantial part of the inducement to the Coal Company to supply the coal was its knowledge of its intended use by vessels for maritime purposes, and its understanding that the law gave it a lien for coal supplied for such purposes. Upon the facts in this case it is most im-

probable that the coal would have been supplied to the owner and upon the owner's very doubtful credit.

"I find that it was furnished because it was destined and intended to be used in large part by vessels, and that in the sense of the statute it was therefore furnished to vessels upon the faith of a lien thereon, and not to the owner.

"The ultimate destination to vessels, and the use by vessels, being a material consideration, contemplated by both parties, it would be most unjust to the libelant to hold that it furnished the coal to the owner, and only on the owner's credit. The mere fact that the names of the particular vessels to receive particular shipments of coal were unknown I cannot regard as material. The Oil Corporation was known to be the owner of a fleet of vessels, and it was known that these vessels would call from time to time at the Oil Corporation's wharves for their coal. That is sufficiently certain which, in the due course of the contemplated supply of coal to the fleet would be made certain.

"The subsequent appropriation of the coal to particular vessels by the owner, being in pursuance of what was intended by both parties, logically relates to the question whether the coal was furnished by the libelant to a vessel. The course of the business of the owner's fishing fleet selected and made certain which of the vessels should receive the benefit of the libelant's coal and become subject to a maritime lien corresponding to the benefit received. A contract to provide coal for such vessel of a fleet as might first arrive in port, and the delivery of coal ready at the owner's wharf for such vessel would become definite on the arrival of the first vessel of the fleet.

“As supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet, as supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels, as at the time supplies are ordered there may be uncertainty as to which vessel may require them and use them, the statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of the vessel which is to require the supplies.

“The appropriation of the coal to a particular vessel, though made by the owner, yet if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a “furnishing” by the libellant to “a vessel,” which is identified by the act of the owner in placing the coal aboard.

“Cases which hold that supplies may be furnished to a vessel, though not actually incorporated in or used by the vessel, have no bearing in this case. While use and appropriation may not, in all cases, be necessary to make out a case of furnishing to a vessel, it does not follow that they may not afford conclusive evidence of the identity of a vessel and of the completion of a maritime lien thereon.

“But the question of the effect of an appropriation to a particular vessel I regard as settled by the decisions of Mr. Justice Curtis and Judge Putnam, heretofore cited. In these cases it was at

the outset uncertain which of two vessels might receive the supplies. In the present case it was uncertain which vessels of a fleet might receive them, but in this case, as in the cases cited, the uncertainty ended upon the owner's appropriation of the coal to special vessels.

"Following the decisions of Justice Curtis in *The Kiersage*, 2 Curt. 421, Fed. Cas. No. 7762, and of Judge Putnam in *Berwind-White Coal Mining Co. v. Metropolitan S. S. Co.* (C. C.), 166 Fed. 784, I am of the opinion that for such coal as actually went into any vessels of the fleet the libelant is entitled to a maritime lien upon such vessel, but that there can be no lien upon one vessel for coal supplied to another vessel. See, also, *The Yankee*, 233 Fed. 917, 927."

The Circuit Court of Appeals reversed the decrees of the District Court because it felt obliged on historical grounds deemed of importance to restrict and contract the application of the Act of Congress and limit it to cases where the name of the vessel to which supplies are furnished and the extent of the supplies are known and specified in advance.

We quote the following from the opinion written by Judge Dodge:

"Assuming that the libelant can be said, in the case of any one the vessels, to have 'furnished to' her the coal she received, in the statutory sense, the furnishing may be said to have been 'upon the order of her owner.' But the question is, whether any such assumption can be made, in view of the facts that after turning over to the owner of the fleet the entire quantity of coal

shipped as above, the libelant left it wholly to the owner to select, out of the fleet, the particular vessels by which the coal was to be received and used, and to determine the particular part of said quantity to be put on board each vessel, as well as the particular time for putting it on board.

“The Federal statute enlarged the maritime law as it had previously stood, by permitting the acquirement of maritime liens upon vessels, for supplies furnished to them, as well in their home ports as in foreign ports. This it accomplished by providing that proof of furnishing such supplies to a vessel should be sufficient proof of credit given to the vessel therefor,—definite proof of credit so given having always previously been held necessary, whenever what had been furnished had been furnished at the port of the owner’s residence. We see no reason to believe that the statute intends the same result to be accomplished without proof that the supplies for which a lien is claimed have been furnished directly to the vessel, and not merely furnished to the owner without definite and distinct reference to her.”

These two quotations indicate the point where the views of Judge Brown and Judge Dodge diverge.

The petitioner is to be deprived of its lien and its decrees undermined for the benefit of the purchaser of the vessels at foreclosure sale, which purchaser acquired the vessels with full knowledge of the facts, all for the reason that the petitioner did not do the impossible and indicate in advance of the delivery of the coal at the Oil Corporation’s bins the name of each vessel to be supplied with coal and the amount to be appropriated for each vessel.

Our position is that such a construction so narrows and contracts the Act of Congress that it is wholly unavailable to Corporations operating fleets of vessels and that the question is one of general public importance, especially under prevailing war conditions when (a) the utmost secrecy is required to be preserved with respect to the movements of ocean going vessels and (b) the maintenance of the nation's coal supply requires the maximum utilization of storage facilities at points of consumption.

1. The authorities sustain the libellant-petitioner's claim for liens against each vessel to the extent of the coal used by it under the circumstances of this case.

The act of June 23, 1910, affords a maritime lien for supplies furnished to a vessel and where coal is delivered to the insolvent owner of a fleet of vessels for distribution among the vessels of the fleet, and it is expressly stipulated that the delivery is made upon the credit of the vessels and not upon the credit of the owner, a lien attaches to each vessel for the value of the coal actually distributed to and used by it. The decision of the Circuit Court of Appeals denying such a lien and contracting the scope of the act of Congress is erroneous.

The Act of Congress of June 23, 1910 (36 Stat. 604, chapter 373) printed in full in the margin below provides that,

(§1) "Any person furnishing * * * supplies * * * to a vessel, whether foreign or domestic upon the order of the owner or owners of such vessel * * * shall have a maritime

lien on the vessel which may be enforced by a proceeding *in rem* and it shall not be necessary to prove that credit was given to the vessel."

In the case at bar the Oil Corporation, the bankrupt owner of a fleet of 19 steam fishing vessels ordered from the petitioner for the purpose of keeping its fleet afloat five cargoes of coal, valued at \$17,854.27. By the express terms of the Act of Congress there is a presumption that the coal so furnished to the vessels was furnished upon the credit of the vessels and not upon the credit of the owner, but the petitioner did not rest upon any mere statutory presumption—it refused to deliver any coal on the credit of the owner, declined to accept the owner's proposal that it accept its note secured by mortgage bonds as collateral and finally consented to deliver the coal solely upon the credit of the 17 vessels of the fleet then in service and under an express agreement that it should have a maritime lien therefor.

The Circuit Court of Appeals has held, however, that *notwithstanding the statutory presumption and the express agreement and stipulation of the parties*, no maritime lien attached under the Act of Congress for the reason—and we again quote directly from the opinion of Judge Dodge—that:

"After turning over to the owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select out of the fleet the particular vessels by which the coal was to be received and used, and to determine the particular part of said quantity to be put on board each such vessel as well as the particular time for putting it on board."

Reduced to a simple analysis the decision of the Circuit Court of Appeals denies a maritime lien to a supply man who furnishes the supply through the agency of the owner of the vessel. We submit that such a construction of the Act of Congress is not only unreasonable and untenable, but is contrary to the best considered authorities.

In *Berwind-White Coal Mining Co. v. Metropolitan SS. Co.*, 1908, 166 Fed. 782, affirmed by this Court 173 Fed. 471, an intervening petition was filed seeking to have liquidated and allowed certain claims for work and material furnished on two steamers as a part of their original construction, and Judge Putnam held that where a joint contract provided that payments should be made to the contractor for labor and materials furnished for the construction of several vessels, under the statutes of New Jersey there was no inherent difficulty in determining the amount to be paid for labor and materials which went into each vessel, nor in apportioning the lien accordingly.

Judge Putnam further held that it was not essential to the validity of a lien given by a state statute on a vessel for labor or material furnished in its construction that the same should have been furnished on the credit of the vessel, where the statute does not in terms require it.

He said at page 784:

"The underlying equity is that the lien is supported by the fact that the labor and materials have actually gone into the property on which the lien is claimed, and increased its value."

In *The Kiersage*, 1855, 2 Curtis 421, 14 Fed. Cas. 466, it was held that a law of Maine similar in purport to the Lien Act did not give to material men a lien on one vessel for supplies and materials furnished both for it and for another vessel though both were of the same size and model, but that the lien was only for such supplies as are used in the vessel proceeded against.

Mr. Justice Curtis, who delivered the opinion of the Circuit Court, used the following language, at page 467, and as Judge Brown remarked in his opinion below, it "seems to be directly applicable to the case before us":

"At the same time, I think that where materials are furnished for two specific vessels, though the original contract does not appropriate them specifically to either, yet when they are afterwards appropriated, they may properly be considered as furnished for that vessel, in the construction of which they are used. The effect of such a contract is to enable the builder to elect, to which of the two vessels he will appropriate them. When he has made that election and actually appropriated them or some part of them to one vessel, I can see no sound reason, why it may not be said with truth, that they were furnished for and on account of that vessel, and so, that the case is within the terms of the law."

The case of *The Kiersage* has been cited with approval in two recent cases.

In *The Yankee*, 1916, 233 Fed. 919, decided by the Circuit Court of Appeals for the Third Circuit, the dredge *Yankee*, chartered to a dredging company, was being used by it in dredging in the Delaware river below

Philadelphia. The libelants furnished supplies on orders of the dredging company, which specified that they were for its fleet of vessels including the dredge *Yankee* and contained shipping directions pursuant to which the supplies were forwarded by rail and other carriers to a designated wharf in Philadelphia, from which they were taken from time to time by the dredging company to the dredge where it was at work. It was held that such supplies were "furnished * * * to a vessel", within the meaning of the Act June 23, 1910, c. 373, § 1, 36 Stat. 604 (Comp. St. 1913), relating to maritime liens, and that under that act one furnishing supplies for a vessel on proof of an order therefor from the owner or from a person to whom the management of the vessel has been lawfully intrusted at the port of supply, and of the fact that the supplies reached the vessel, has the right to a maritime lien on her.

Circuit Judge Woolley, delivering the opinion of the court, said at page 927:

"With respect to the claim of the last named libellant, which grew out of a contract to supply coal for the whole fleet, we are satisfied that in giving the order, the quantity to be supplied to and daily consumed by the *Yankee*, was mentioned and considered by the parties, and that of the total amount of coal supplied, a definite portion was appropriated for and furnished to the *Yankee* within the rule of law applicable in such cases. *The Kiersage*, Fed. Cas. No. 7762; *The Murphy Tugs* (D. C.) 28 Fed. 429; *McRae v. Bowers Dredging Co.*, (C. C.) 86 Fed. 344."

In *The Cora P. White*, 1917, 243 Fed. 246, which was

a libel against a fishing vessel, one of the libelants claimed a maritime lien for coal furnished to the vessel. While the District Court decided that no maritime lien existed for the coal furnished, the sole reason for that decision was that the coal was furnished to the owner company without mention that the coal was intended for use on a vessel. District Judge Rellstab said at page 249:

“The act of June 23, 1910, extended said lien to domestic vessels, and made it unnecessary to allege or prove that credit for the supplies, etc., was given to it, but it did not obviate the necessity to allege and prove that said supplies were in fact furnished to the vessel. This does not mean that the materialman must personally see that the goods are actually put on the vessel. If the supplies are furnished on the orders of the person to whom its management has been lawfully intrusted at the port of supply, and which pursuant to the orders of such person were forwarded in the manner indicated to a designated place, from which they were taken by such person to the vessel where it was at work, such supplies are furnished to it within the meaning of the act of 1910. *The Yankee* (C. C. A. 3) 233 Fed. 919, 147 C. C. A. 593.

“Nor did this act change the law that a lien does not exist when the supplies are furnished on the mere credit of the owner. *Ely v. Murray & Tregurtha Co.* (C. C. A. 1) 200 Fed. 369, 118 C. C. A. 520. The agreement or understanding as to whether credit was given to the vessel, or the owner alone, may be inferred from acts and circumstances as well as from express language. *Cuddy v. Clement* (C. C. A. 1) 115 Fed. 301, 53 C. C. A. 94; *The Lucille* (D. C.) 208 Fed. 424.

“No case has been cited, and none has been found, where a maritime lien has been allowed, where the supplies were furnished on the order of the owner, which did not indicate that they were for a vessel's use, because the goods or some of them were subsequently used on said vessel. There are cases which sustain such a lien where the goods or services were ordered for several vessels, and all of the goods or labor were actually furnished or rendered to said vessels. *The Kiersage*, Fed. Cas. No. 7,762; *The Murphy Tugs* (D. C.) 28 Fed. 429; *McRae v. Bowers Dredging Co.* (C. C.) 86 Fed. 344; *The Yankee* (Claim of the Glen Brook Coal Co.), *supra*. In these cases the value of the supplies and services was proportioned and liens allowed on said vessels respectively.”

The principles applied by Judge Arthur Brown in the present case were also applied in two often-quoted cases, *The Murphy Tugs*, 28 Fed. 429, and *McRae v. Bowers Dredging Co.*, 186 Fed. 344.

In *The Murphy Tugs*, 1886, 28 Fed. 429, the libellant made a contract with the president of the tug boat company to serve as a diver and engineer and was to be paid at the rate of \$10 a day and to work on any vessels of the company as ordered. In dealing with this and sustaining the liens, Mr. Justice Brown, then District Judge in Michigan, said at page 430 [*italics ours*]:

“The difficulty in this case arises from the fact that the contract between the libellant and the Tug and Transit Company was not for services upon any particular tug, but for services upon any tug owned by the company to which he might be ordered. I doubt if this circumstance varies in

any way the principle applicable to this class of cases if his services are paid by the day, and *are therefore capable of apportionment*. While the services may not be actually rendered upon the tug, he is for the time being a part of the equipment of such tug, and entitled to a lien upon her, upon the principle announced by this court in the case of *The Minna*, 11 Fed. 759, in which I had occasion to hold that all hands employed upon a vessel, except the master were entitled to a lien, if their services were in furtherance of the main object of the enterprise in which she was engaged. In this case a lien was sustained in favor of persons employed upon a fishing tug, solely for the purpose of catching and preserving fish, notwithstanding the fact that they took no part in the navigation of the vessel, and that an incidental portion of their duties was performed on shore.

“To deny the libellant a remedy by lien is virtually turning him over to a personal claim against an insolvent corporation. While the case is a somewhat doubtful one, I am inclined to allow the claim.”

McRae v. Bowers Dredging Co., 1898, 86 Fed. 344, which cited *The Murphy Tugs* at page 347, was an equity case in which the defendant was an insolvent corporation whose property was in the hands of a receiver. The intervening creditor in question had furnished necessary supplies and materials for repairs to defendant's vessels and machinery. Among the supplies furnished was coal consumed by two vessels, which was furnished upon the request of the general manager. This coal was necessary to enable the defendant's dredgers to work.

The evidence showed that the general manager did not have money to pay for or means to procure this coal otherwise than upon the credit of the dredgers. The court held that this evidence was sufficient together with evidence that it was furnished at the manager's request in scows, from which it was received on board the dredgers as required for use, to raise a conclusive presumption of necessity for using the credit of the vessels and the creation of maritime liens, citing *The Grapeshot*, 9 Wall, 129-145; and *The Lulu*, 10 Wall, 192, 204. The court further held that where persons were employed on and coal furnished to two or more vessels and the evidence shows the time which each man devoted to the service of each vessel and the amount of coal used on each, the amounts will be fairly apportioned between the vessels and as a court of equity it enforced preferential claims based entirely on maritime liens against the estate.

The Court said at page 348 [italics ours]:

"All of the coal consumed by both vessels while engaged in the work was purchased of the intervenor C. J. Smith, as receiver of the Oregon Improvement Company. The evidence shows that the defendant is a corporation organized under the laws of the State of Illinois. Its president and general officers, except a general manager, were not inhabitants of this state, and it had no general office in this state while the work referred to was being done. The coal was furnished upon the request of the general manager, and was delivered in scows, from which it was received on board the dredges as required for use. *The evidence shows the average daily consumption of*

each of the dredges, and the number of hours each was in operation; and from this data a close estimate of the amount supplied to each can be ascertained, and a fair apportionment made, so that the liens upon each vessel will not be for a greater amount than the price of the coal which she consumed."

While it is true that certain of the above decisions were rendered under state statutes we fail to perceive any substantial basis for distinguishing them or questioning their authority.

Especial reliance is placed upon the decision in *The Kiersage*, 2 Curtis 421.

The Maine statute there involved allowed a lien for supplies "*furnished to or for account of a vessel.*" A quantity of supplies were delivered to the owner of two vessels who was permitted by the supply man to apportion them among the two vessels—in the language of Judge Dodge, in the present case it was left to the owner "to determine the particular part of said quantity to be put on each vessel as well as the particular time for putting it on board."

Justice Curtis however upheld the lien in *The Kiersage* on the express ground that the several quantities apportioned to each vessel by the owner were "furnished to" the vessel by the supply man. This is precisely the language used in the Act of Congress of June 23, 1910 which is under consideration here.

Furthermore, the equity of the case is wholly in the coal company's favor. For supplies furnished to keep an insolvent concern running, preferences over a mort-

gage are always granted by courts of equity even when the question of maritime liens is not involved, for the establishment of liens for supplies furnished does not depend altogether upon statute law. The courts have held in many cases of receiverships that one who furnishes supplies necessary, for example, to the operation of a railroad as a continuing business, has the right to preferential payment from surplus earnings in the hands of the receiver subsequently appointed, and that bondholders cannot claim priority for their mortgage. *Va. & Ala. Coal Co. v. Central R. R.*, 1897, 170 U. S. 355; *Miltonberger v. Logansport Ry. Co.*, 106 U. S. 286, 311, 312; *Union Trust Co. v. Illinois Midland Co.*, 117 U. S. 434; *Thomas v. Western Car Co.*, 149 U. S., 95, 110; *Southern Ry. v. Carnegie Steel Co.*, 76 Fed., 492; 176 U. S., 257; *Manhattan Trust Co. v. Sioux etc. Co.*, 76 Fed. 658; *Bellingham Bay etc. Co. v. Fairhaven etc. Co.*, 17 Wash., 371; *Farmers Loan & Trust Co. v. American Water Works Co.*, 107 Fed., 23; *N. Y. Guar. & Indem. Co. v. Tacoma etc.*, 83 Fed. 365.

Nor is the rule limited to railway receiverships: *Reinhart v. Augusta M. & T. Co.*, 94 Fed., 901.

II. *The Lien Act was intended to broaden and increase the security of persons furnishing supplies to vessels, not to narrow or circumscribe it, and hence should have an enlightened construction to meet modern needs.*

In *The Oceana*, 1917, 244 Fed. 80, which was a consolidated libel to enforce maritime liens against *The*

Oceana, the main question was that of notice. It was held that all persons furnishing supplies, whether before or after formal delivery of a vessel from the ship repairer, without knowledge or notice of the contract of sale, were entitled to liens therefor. Judge Ward who delivered the opinion of the Court, discussed the nature and purpose of the Lien Act, and showed that its purpose was to increase not to limit the material man's security by way of lien. He said at page 82:

"Obviously the act was passed in restriction of the rights of vessel owners and in the aid of those who furnish repairs, supplies, and other necessities. It wiped out all difference between foreign and domestic vessels, and between repairs, supplies, and other necessities furnished in the home port, as distinguished from those furnished in foreign ports, and between such as were ordered by the master and such as were ordered by the owners. It created a presumption of law of the vessel's liability for all repairs, supplies, and other necessities ordered by the master, managing owner, ship's husband, charterer, any person to whom the management of the vessel is intrusted at the port of supply, owner pro hac vice, and conditional vendee."

III. *It is not necessary in order to impress a lien that the supplies be actually delivered on board the vessel by the person who supplies them.*

If supplies are brought within the immediate presence or control of a ship, the vessel, of course, is bound. *Ammon v. The Vigilancia*, 1893, 58 Fed. 698.

In *D. & H. Canal Co. v. The Alida*, 1857, 23 Betts D. C. Mss. 139, 7 Fed. Cas. 399, which was a libel for fuel furnished, District Judge Betts, in giving a decree for the libelant, held that a lien on a steamer for fuel arises upon a delivery thereof on a wharf nearby in pursuance of the orders of her officers.

In *The James H. Prentice*, 1888, 30 Fed. 277, Sanborn, sole owner of a barge, contracted with one Beaudry to repair and improve her. While the work was going on he agreed to sell a half interest in her to Kelly, and further authorized Kelly to superintend the work and to settle the bills therefor. He subsequently conveyed to him his half interest. Libelants, knowing nothing of the contract with Beaudry and Kelly, and supposing Kelly to be a part owner, furnished lumber to the contractor Beaudry, which Kelly inspected and promised to pay for. It was held that Sanborn had so conducted himself as to lead libellants to believe that Kelly was authorized to bind the vessel, and that they had a lien for the amount of their bill.

It was further held that under a statute giving a lien for material furnished in and about the building and repairing of water craft, it is sufficient to show that the materials were ordered for and delivered to or near the vessel though it appeared that a part of them were subsequently used for other vessels, and that the act did not require proof that the materials were actually incorporated in the vessel sought to be charged.

IV. *It is settled law that an owner may by agreement, express or implied, create a lien on his vessel for supplies furnished.*

In *The Kalorama*, 1869, 10 Wall. 208, which was a libel for advances ordered by the owner for repairs and supplies to the steamer, the District Court held that the advances were a lien upon the steamer. The Circuit Court held that they were the mere personal debt of the owner. The Supreme Court affirmed the decree of the District Court.

Mr. Justice Clifford said at page 214:

“Implied liens it is said can be created only by the master, but if it is meant by that proposition that the owner or owners, if more than one, cannot order repairs and supplies on the credit of the vessel, the Court cannot assent to the proposition as the practice is constantly otherwise.”

In *The Cimbria*, 1914, 214 Fed. 128, it was held that under Act June 23, 1910, one advancing money to pay claims for repairs, supplies, etc., furnished to a vessel, is presumed to have made the advances on the credit of the vessel, and such presumption is not overcome by his taking the owner's note and a mortgage on the vessel.

In *The Alaskan*, 1915, 227 Fed. 594 (C. C. A. 9th Circuit), it was held that under the Washington State Code §1182 which gives a lien on a vessel for repairs made at the request of the owner, agent, etc., conceding that there must be some evidence that the repairs were furnished on the credit of the vessel, such evidence need

only be slight; and the uncontradicted evidence of the repairer that he relied on the credit of the vessel, and that he had previously made repairs for the same owner, charged the same to the vessel direct, and rendered the bills to the owner, is sufficient.

In *The George Dumois*, 1895, 68 Fed. 926 (C. C. A. 5th Circuit), coal was furnished by libelant at Mobile, Ala., to the ship G. upon the personal order of one D., the president of the C. Company, the charterer of the ship. The C. Company was a Louisiana corporation and D. a resident of New Orleans, neither appearing to have had any property at Mobile. The ship was not in a port of distress, but was running regularly between Mobile and foreign ports. No reference was made to the vessel as a source of credit when the coal was ordered, but it was received by the master and used in prosecuting a voyage which could not have been made without it, and it was charged on libelant's books to the ship. It was held that libelant had a lien on the ship for the price of the coal.

The Court in *The George Dumois*, further held that where necessary supplies are furnished to a ship in a foreign port, and are received by the master and used in the service of the ship, a maritime lien results, unless it is shown that the furnisher of the supplies relied on the credit of the owner, not of the ship; and the burden of showing such fact, to defeat the lien, rests on the ship and her claimants.

In *The Fortuna*, 1914, 213 Fed. 284, it was held that articles furnished on the order of the master and repre-

sentative of the owner to supply the slop chest of a vessel about to sail on a season's fishing trip of four or five months' duration, are "supplies or other necessities" within the meaning of the Act of June 23, 1910, c. 373, §1, 36 Stat. 604, for which such section gives a lien on the vessel.

The recent decision of the Circuit Court of Appeals for the Ninth Circuit in *The South Coast*, 247 Fed. 84, indicates the strength of the presumption that supplies are furnished on the vessel's credit.

In that case there was a charter of a ship with option to purchase and the owner reserved only the right to appoint the master who was to be paid by and be under the orders of the charterer. It was provided that the owner might reject the vessel on failure of the charterer to pay the charter hire or to discharge any liens within thirty days after they accrued, and that the charterer should hold the owner harmless from all liens or demands against the vessel created during the charter term.

It was held that the provision for this indemnity did not negative the authority of the charterer to procure supplies on the credit of the vessel, but, on the contrary, rather implied such authority, and that anyone who, in good faith, furnished the necessary supplies on the master's order on the credit of the vessel was entitled to a lien therefor, although the owner had notified him not to furnish the supplies.

In a very interesting opinion, Judge Wolverton points out that the owner's attempt to prevent the libellant from advancing supplies on the credit of the vessel was really

an invasion of the charterer's rights under the charter and was unavailable to subvert the master's authority in the premises.

Judge Wolverton said at page 88:

"Now, coming to the instant controversy: The repairs and supplies in question were furnished on the order of the master. The master, who was appointed by the owner, was obliged, under the charter party, to take his directions from the charterer. The libelant was apprised of the existence of the charter party, and was warned by the owner not to furnish supplies on the ship's credit. The libelant, nevertheless, furnished the supplies, with the declaration to the owner's representative that he would not furnish them in any other way, or under any other conditions, than upon the credit of the ship.

"It is the purpose of the statute, as it was the purpose of the law previous thereto, that the furnisher of such commodities as are necessary to enable a ship to enter upon or pursue her voyage, and to engage in maritime traffic, to which only she is adapted, shall have a lien on the ship therefor. It is in the interest of shipping, conducted upon maritime waters, that such should be the case, as otherwise credit would not be extended, upon the account of the owner or master alone, to enable the ship to discharge its peculiar function, and great inconvenience would follow, to the detriment and disadvantage, if not the ultimate disaster, in large measure, of maritime shipping. Many ships sail under charter, either verbal or in form of regularly drawn charter parties, and it is usual and customary for the charterer in either event to disburse the necessary expenses of the

ship; and of this all persons furnishing supplies, etc., to a chartered ship must be deemed to have notice. But notwithstanding this notice, or even knowledge that the ship is under charter, we cannot believe that it was the intendment of the statute or of the law that the furnisher should, because of that fact, be deprived of his lien when advancing necessary repairs or supplies in good faith to enable the ship to engage in her accustomed traffic. Nor do we believe that it was the intendment of the statute or of the law thus to impose so vital a hindrance upon maritime shipping, and unless there is something more in the charter party, that unalterably inhibits the master or the charterer from incurring any expenditures on the credit of the ship that may become a lien thereon, the master's ordinary authority is not impaired or abbreviated; nor can the right of the furnisher of repairs, etc., to extend credit to the ship, and his consequent lien, be so subverted.

"The terms of the present charter party as respects the furnishing of repairs, supplies, etc., are only those usual to most charter parties, and by reason of the provision that the charterer will hold the owner harmless from all liens against the vessel, there is an implication of authority on the part of the charterer to incur such expenses on the credit of the vessel. True it is that the owner attempted to prevent the libellant from advancing the supplies on the credit of the vessel; but this was an invasion of the charterer's rights under the charter party, and was unavailing to subvert the master's authority in the premises. As bearing upon the proposition, in addition to *The Surprise*, *supra*, see *The Philadelphia*, 75 Fed. 684, 21 C. C. A. 501."

Even though this Court should find that there was no express agreement to furnish coal for specific ships the circumstances are such that this Court should imply an agreement to create a lien on the particular ships which actually used the coal for the coal used by each. *The Grapeshot*, 1869, 9 Wall. 129; *The Ella*, 1897, 84 Fed. 471, 477; *The Worthington*, 1904, 123 Fed. 725; *The Kalorama*, 1869, 10 Wall. 208; *The Emily Souder*, 1873, 17 Wall. 666; *The Valencia*, 1896, 165 U. S. 264, 271; *The Patapsco*, 1871, 13 Wall. 329, *The Havana*, 54 Fed. 201; *The Newport*, 1901, 107 Fed. 744; 114 Fed. 713.

V. *Agreements for a general lien such as was here shown have frequently had judicial approval.*

In *The Patapsco*, 1871, 13 Wall. 329, coal was ordered by the owners under a general contract for all their vessels. Part of the coal was delivered on board the *Patapsco* at a foreign port. The facts showed that the owners of the vessel did not have good credit and that the Coal Company was aware of this fact, and that the Coal Company looked to the vessels as security.

The court held that a maritime lien existed for the value of coal supplied, unless it was shown that the master had funds or the owners had credit. *It was also held that an entry in the ledger charging coal to owners was not sufficient to show that credit was given owners personally.*

Mr. Justice Davis delivered the opinion of the Court and said at page 333:

“It would be strange if the libellant did not know this condition of things and in the absence

of proof on the subject, it is a reasonable inference that he did. If he had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished."

To the same effect is the case of *Lower Coast Transportation Company v. Gulf Refining Co.*, 211 Fed. 336, decided by the Circuit Court of Appeals of the Fifth Circuit.

In the present case, there is clear proof of the libellant's knowledge of the Oil Corporation's shaky financial condition. As Judge Brown said in his opinion in the case at bar, at page 129 of the *record*:

"It may be said, therefore, that the parties contracted knowing that a large portion of the coal was to be used for a strictly maritime purpose, and in reference to such legal rights as existed under the United States statute."

In *The Patapsco*, *ubi supra*, Mr. Justice Davis said at page 334:

"If the credit was to the vessel there is a lien, and the burden of displacing it on the claimant. He must show, affirmatively, that the credit was given to the company to the exclusion of a credit to the vessel. This he seeks to do by the form of charge in the libellant's journal and ledger. If it be conceded that these entries tend to support this position, they are far from being conclusive evidence on the subject. Entries in books are always explainable, and the truth of the transaction can be shown independent of them."

In certain phases that case is square with the facts in the case at bar. Here the bookkeeper merely charged the shipments as they were made into the general running account of the Oil Corporation even though both he and the officers of the Coal Company knew that the coal was furnished on the credit of the steamers for which the coal was intended. The change in the method of charging the coal was made at the Oil Corporation's request and is not subject to any criticism by the successors in title to the Oil Corporation especially as it was made at the suggestion of the Oil Corporation.

In *The Freights of the Kate*, 1894, 63 Fed. 707, a steamship line obtained certain letters of credit from its bank, and as collateral security for the payment of the drafts drawn thereon, hypothecated to the bankers "all freights earned and to be earned." The freights referred to were the freights of all the several vessels of the line. The Court held that hypothecation of the freights created a general lien on the freights for all the voyages of all the boats and that such a maritime lien was properly created by agreement. The Court further held that freights of vessels B, C and D might be hypothecated to obtain supplies for vessel A. At page 712 Judge Addison Brown said:

"I see nothing invalid in such a general hypothecation. The parties, in effect, treated the vessels run by the company as constituting a line, and dealt with the line and all the vessels running in it, as with a single vessel. See *The Rosenthal*, 57 Fed. 254. This was the undoubted intention. In the negotiations, no particular steamers were

named; the drafts were to disburse the company's steamers, *i. e.*, any or all of them, as might be needed. As between the parties there is surely nothing invalid in procuring necessary supplies for a line of vessels by an extended hypothecation of that kind. A master could not make such an extended hypothecation, because his authority extends only to his own vessel. But the owner is not thus limited. 'No one has ever questioned,' says Butler, J., in *The Mary Morgan*, 28 Fed. 199, 'that an express lien may exist whenever the owner chooses to create it.' The freights belonged to the steamship company; and in thus hypothecating them, they exercised no more than an owner's ordinary right. The extended hypothecation was adapted to the modern modes of business, and was not violative of any rule of the maritime or municipal law."

At page 713, Judge Addison Brown said:

"* * * maritime liens, resting wholly on express contract, have constantly been enforced. Such is the ordinary express contract of bottomry; the lien for supplies, under the English practice; the lien for charter hire upon the subfreights of a chartered vessel in possession of the charterer; the lien for supplies by material men, or for advances by the ship's agent, on dealings with the owner alone. *The James Guy*, 1 Ben. 112, Fed. Cas. No. 7,195; *Id.*, 5 Blatchf. 496, Fed. Cas. No. 7,196; *id.*, 9 Wall. 758; *The Kalorama*, 10 Wall. 214; *The Patapsco*, 13 Wall. 329; *The Stroma*, 3 C. C. A. 530, 53 Fed. 281, 283; *The Erastina*, 50 Fed. 126. See also *The Volunteer*, 1 Sumn. 551, Fed. Cas. No. 16,991; *The Kimball*, 3 Wall. 37, 44."

The Freights of the Kate, *supra*, stands specifically for the proposition that an hypothecation of freights earned and to be earned was a maritime contract and that it created a general lien on all freights of the steamship company, including those of vessels subsequently chartered, and that such a lien can be enforced in admiralty against the freights of vessels arriving after the failure of the company and further that this general lien was subordinate to any specific lien on the same freights for advances actually applied to assist the current voyage. In this case, as in the case at bar, there was a mortgage, but the Court said at page 714:

“The only other party in the case who might complain of the general hypothecation, is the mortgagee; and under both the maritime, and the municipal law, I think the mortgagee’s rights are inferior to this express hypothecation.”

Again, the Court said at page 715:

“The mortgagee and receiver contend that any such general lien as above stated is inferior to their claims. The ordinary rule, however, is that a mortgage of vessels is inferior in rank to subsequent maritime or statutory liens for supplies; because the former is a nonmaritime security, while the latter are in aid of the necessities of commerce and navigation. *The J. E. Rumbell*, 148 U. S. 1, 13 Sup. Ct. 498.”

In *The Advance*, 1896, 72 Fed. 793, affirming 63 Fed. 726, the owners of vessels borrowed money in the home port to discharge liens on vessels at foreign ports and enable them to continue their voyages. The owners ex-

pressly hypothecated the freights to cover the drafts. The Court held that this express hypothecation created a general maritime lien on the freights alone and did not create a lien on the vessel itself. Circuit Judge Shipman, who delivered the opinion of the court, said at page 798:

“* * * At the threshold of the inquiry, three facts are manifest: Firstly, an absolute necessity, recognized by each, and consequent upon the known insolvency of the steamship company, of a maritime lien of some sort; secondly, that a maritime lien was given, which the district court has found to be, at least, upon the freights,—a conclusion which has now become *res adjudicata*, and in which our examination of the case leads to a full concurrence; thirdly, and one of great importance, that whatever security was given was expressly given. The contract between the parties was an express contract, entered into between the owner of the vessels and Mr. Huntington. The antecedent circumstances are valuable for the purpose of throwing light upon the probabilities of the contract, and in the ascertainment of what one party would have naturally proffered and the other party would naturally have insisted upon; but whereas, in many cases, courts, in consequence of the silence of the parties when the advances were made, or their subsequent forgetfulness of what occurred, are compelled to look at the inferences to be drawn from their conduct and acts, in view of the known insolvency of the owner, little resort can be had in this case to that class of evidence. There is a class of cases, in regard to maritime liens for supplies furnished to a vessel in a foreign port at the request of the owners or of their agent (of which *The James Guy*, 1 Ben.

112, Fed. Cas. No. 7,195, and 9 Wall. 758, and *The Patapsco*, 13 Wall. 329, are examples), in which there was not apparently an express contract between the owners and the material men for the credit of the vessel, but in which the lienors' knowledge of the insolvency of the owner was regarded as a very significant fact, from which the inference could naturally be drawn that credit must have been given in part to the vessel. In this case a court is able to ascertain what the owner offered, and what the lienors apparently accepted, as security, at the time when the contract was entered into. The terms of the express contract, when they can be accurately ascertained, must preclude the idea of a contract to be ascertained by inference for another and different security from the one contained in the express contract. It is true that Huntington's knowledge of the utter insolvency of the steamship company is important to show that he naturally would have wanted to get all the security which was available, but, if the evidence shows that he did content himself with the security of the freights, his lien must rest where he placed it."

Astor Trust Co. v. White, 4th Cir. C. C. A., 1917, 241 Fed. 57, is mentioned by the appellant. The case seems to recognize the correctness of Judge Brown's decision in the case at bar, in view of the proof that the coal was used by the steamers. It apparently arose out of another phase of the same receivership as was involved in this case and which is a late case in the Circuit Court of Appeals dealing with maritime liens, and when their right to priority should be allowed. Certain supplies were needed for a fleet of four fishing vessels.

The charterers' credit was poor. The appellees agreed to furnish the supplies provided they were secured by a lien on the vessels. This was agreed to and notes aggregating \$2,000 were given, which were endorsed with the names of all the vessels and the names of two men. It was agreed further that for additional supplies furnished the appellees should have a lien on all the vessels, separately and as a whole. The aggregate of amount of supplies furnished was about \$2,200.

Other parties libeled the four steamers and the appellees filed two intervening libels, one against the Steamer *Lawrence* for half of its claim, and one against the Steamer *Portland* for the other half. Under decree all four of the vessels were sold, but only the *Lawrence* brought enough to pay more than the prior claims of wages. The appellees filed amended libels against the *Lawrence* for the other half of their claim. Appeal was taken from the decree which sustained the amended libels and directed payment of the several amounts out of the fund resulting from the sale of the *Lawrence*.

Judge Knapp, delivering the opinion of the Court, said at page 60 (Italics ours):

“Nearly 100 years ago, Mr. Justice Johnson, speaking for the Supreme Court in *The St. Jago de Cuba*, 9 Wheat, 409, 416 (6 L. Ed. 122), said:

‘The whole object of giving admiralty process and priority of payment to privileged creditors is to furnish wings and legs to the forfeited hull to get back, for the benefit of all concerned; that is, to complete her voyage.’

"And this figure of speech expresses the central idea of a maritime lien, namely, the equitable right, springing from the necessities of commerce, to hold the vessel itself for something done or furnished *to it* which enables it to continue in service, and without which its earning power would be greatly reduced, if not destroyed. It is the needful and saving benefit to the *res* which gives the right to proceed *in rem*. On no other basis can that right be supported. And this conception of the essential nature of a maritime lien pervades the whole range of statute law and judicial utterance upon the subject. For example, in 26 Cyc. 787, the principle is summed up as follows:

'The basis of a lien for necessities is a benefit rendered the vessel. Hence, in order for such a lien to arise, the necessities must be either delivered on board the vessel or brought into immediate relations with her, as by being delivered on the wharf or into the custody of some one authorized to receive them.'

"And this is but a paraphrase of the oft-quoted statement in *The Vigilancia* (D. C.), 58 Fed. 698:

'There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship.'

"But this principle, long accepted and familiar, seems clearly to refute the contention of appellees that the owner of two or more vessels, used in a common service, may by verbal agree-

ment subject them to a joint and several lien, 'singularly and as a whole,' for supplies furnished indiscriminately to all of them, without attempting to segregate or identify the portion designed for any particular vessel, so that each of them will be bound for supplies furnished to the others, even if it receives none itself, and that such a lien will be good as against a prior mortgagee whose mortgage is duly recorded. We cannot assent to the proposition. It is plainly at variance, in our judgment, with the fundamental idea of a maritime lien; nor has it ever been recognized, so far as we are aware, in the general maritime law of the country, or in any legislative enactment."

* * * * *

"The appellees refer us to a number of cases, among them *The Kalorama*, 77 U. S. 204, 19 L. Ed. 941, and *The Valencia*, 165 U. S. 264, 17 Sup. Ct. 323, 41 L. Ed. 710, which hold that the owner may by contract express or implied, create a maritime lien for necessary supplies furnished to his vessel, even in the home port. This is undoubtedly the established rule of law, but it seems clearly without application. None of these cases touches, much less decides, the question here presented, namely, whether the owner can, even by express agreement, give a joint and several lien upon two or more vessels which will hold either of them, *not for supplies furnished to it, or intended for its use*, but for supplies furnished to the others, and which lien will be good as against a prior mortgagee. For that contention we find no authority. Indeed, in all the cases cited, it appears either that the supplies were in fact furnished to the particular vessel sought to be charged, or that the decision was put distinctly

on the ground of estoppel, as in *The Worthington*, 133 Fed. 725, 66 C. C. A. 555, 70 L. R. A. 353, where the dispute was solely between owner and libellant, and no rights of third parties were involved. Even in *The Wyoming* (D. C.), 36 Fed. 494, the court said:

‘Furthermore, if money is advanced to aid in running two steamboats, no lien can be allowed against either *unless the proof shows how much was advanced on behalf of each, and for what purpose it was used.*’

“We therefore conclude that the appellees’ claim in this case cannot be sustained, and are the more content to so decide because of our disposition to restrict rather than enlarge the scope of secret liens.”

It will thus be seen that this case is directly in point and very favorable to the petitioner’s contention in the case at bar. The liens were rightly allowed here, for here

“the proof shows how much was advanced on behalf of each, and for what purpose it was used.”

VI. *As between the owner of a vessel who agrees to give a maritime lien for money or supplies and the person furnishing the money or supplies on the credit of the vessel, the owner is estopped to deny that the money or supplies were actually used for the vessel.*

In *The Worthington*, 133 Fed. 725, a bank advanced the sum of \$300 to the owner of a vessel upon the credit of the vessel in order to enable the owner to load his ship. On the trial it was sought to be shown that the money was not actually used to load the vessel or for

any maritime purpose. The Court refused to receive such evidence holding that the owner was estopped to deny that the money was used for the purpose represented and so defeat the lien.

In the case at bar, the Oil Corporation bought the coal for their fleet, and the necessity for the possession of that coal was pressing and vital. We submit that the Oil Corporation and, consequently, anyone taking title through it, as did the claimant here, is estopped from denying that the coal was used for the fleet upon the credit of which the coal was furnished.

To the same effect as *The Worthington* (*supra*), are *The Schooner Mary Chilton*, 4 Fed. 847; *The Robert Taylor*, 115 Fed. 218.

In *United Hydraulic Cotton Press v. Alexander McNeil*, Fed. Cas. No. 14,404, 20 Int. Rev. Rec. 175, money was advanced to the master on the credit of the ship and spent recklessly by him. The mortgagee of the ship set this fact up to defeat the lien, but the Court held the lien was valid.

In the case of *The Mary*, 1824, 1 Paine, 671, the owner of a vessel gave a bill of sale in the nature of a mortgage but was suffered to remain in possession and act as absolute owner, and her register and other papers remained unaltered. Some eight months thereafter he gave a bottomry bond for money advanced to purchase cargo. Judge Adamson held that upon principle the claim of the lender was to be preferred to that of the mortgagee. This is a leading case and is cited frequently as an authority.

It is quite clear from the preceding authorities that, under the undisputed circumstances in this case, the

libelant was entitled at least to the relief given by Judge Brown, namely, to the maritime liens against the several vessels and for the amount of coal actually used by each, irrespective of the fact that the coal passed through coaling stations of the owner before it was actually put on board the vessels.

VII. *The decision of the Circuit Court of Appeals presents a controverted question of public importance which it is submitted should be settled by this Court.*

The petitioner asks for a review of the decision of the Circuit Court of Appeals on two grounds:

First: That it is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *The Yankee*, 233 Fed. 919.

Second: That the question whether the Act of Congress governing Maritime Liens is available to the owners of vessels operated in fleets upon the state of facts here presented is a question of public importance.

While the Circuit Court of Appeals in the opinion in the present case written by Judge Dodge, does not directly question the decision of the Circuit Court of Appeals in the Third Circuit in the case of *The Yankee*, it is evident that Judge Dodge regarded the case as having been erroneously decided and was unwilling to be guided by the principles underlying it. He refers to the opinion in *The Yankee* as going further than that of any other Court in interpreting the provisions of the Act of Congress, but makes no effort to distinguish the case of

The Yankee from the present one, other than to note that in the case of *The Yankee* where, as in the present case, coal was contracted for by the operating owner for the use of a fleet of vessels, *The Yankee* was specifically named as one of the vessels of the fleet, and it was understood that a specified amount of the coal so contracted for in the name of the owner was for the use of *The Yankee*.

We doubt the correctness of Judge Dodge's interpretation of the Court's opinion in the case of *The Yankee*.

It does not appear from the opinion that *The Yankee* was in fact specifically mentioned by name in the negotiation of the contract, or that she was identified otherwise than as one of the units of the fleet for which the coal was purchased. Neither does it appear, as we read the case, that the exact amount of coal intended for the use of *The Yankee* was definitely fixed and specified, all that the opinion discloses on this point is that "*the quantity to be supplied and daily consumed by the Yankee was mentioned and considered by the parties*".

Clearly the libelant of *The Yankee* had done precisely what the petitioner did in the present case; he sold a large quantity of coal to the owner of the fleet for the indiscriminate use of the vessels of the fleet and delivered the coal to the owner on the credit of the maritime lien on the vessels afforded by the Act of Congress, and left it to the agency of the owner of the fleet to make delivery of the coal to *The Yankee* and other vessels of the fleet and to make the apportionment among them from time to time on the basis of their respective requirements and not on the basis of any specific allotment agreed upon at the time the coal was delivered to the owner.

We contend that upon the actual facts the cases are parallel.

Even assuming, however, that Judge Dodge correctly states the facts disclosed in the case of *The Yankee*, it is still evident that in principle the two cases cannot be distinguished.

There is no substantial reason why the name of the vessel should be specified; it ought to be sufficient if the vessel is identified with reasonable certainty as Judge Brown suggested in the District Court, and we submit that it is so identified when it is mentioned as one of the units of the fleet. Neither can we perceive any substantial reason why the "exact quantity" of coal to be furnished to any one of the vessels of the fleet should be indicated prior to the delivery of the supply to the owner; on the contrary, there are important practical reasons why the apportionment should be left to the agency and discretion of the owner. We quote in this connection from the opinion of Judge Brown, *Record*, page 134:

"As, supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet; as, supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels; as, at the time supplies are ordered there may be uncertainty as to which vessel may require them and use them, the Statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of the fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of a vessel which is to require the supplies.

“The appropriation of the coal to a particular vessel though made by the owner, yet, if done in pursuance of the course of business contemplated by the parties, must be regarded as completing ‘a furnishing’ by the libelant to ‘a vessel’ which is identified by the act of the owner in placing the coal aboard.”

That the movement of vessels is necessarily uncertain is not the only fact to be considered.

Ship owners purchasing supplies for fleets of ocean going vessels or for the cargo carriers of the Great Lakes or even for smaller fleets of trawlers and fishing vessels, can no longer depend on the stocks on hand in the ship chandlery along the water front, as was the practice at the time of the early decisions referred to by Judge Dodge.

Practically all supplies are now purchased in large quantities directly from the manufacturer and producers and coal, the vital factor in the supply service of every great shipping concern, is purchased directly from the mine owners.

These supplies which originate at interior points are brought to tidewater and lake ports through the agency of rail carriers and the deliveries to the consignee are dependent on car supply, weather conditions, and a variety of other circumstances, and are uncertain.

Accordingly, the ship owner, unless his vessels are to be detained in port to await the uncertain arrival of supplies and unless railway equipment is to be detained on sidings to await the uncertain arrival of vessels, very often feels that it is necessary to maintain extensive

storage plants at the bases where its vessels take on supplies.

Purchases are made months in advance of the approximate dates for the delivery of the supplies by the rail carriers and can not, in the nature of things, be made in the name of a particular vessel or for the requirements of a particular vessel and can not ultimately be delivered to a particular vessel without disruption and disorganization of the ship owner's arrangements, otherwise than through the agency of the ship owner.

It is, of course, manifestly to the interest of the public, especially under prevailing war conditions, that all storage plants and facilities be utilized and that large purchases of supplies be made at such times and in such manner as will permit intensive employment of railway equipment by rail carriers engaged in transporting the nation's commerce. It would be intolerable either to detain a vessel in port to await the arrival of freight, or to detain railway equipment upon a siding to await an arrival of a vessel. Yet, these results are inevitable if the coal suppliers, by reason of a narrow construction of the Lien Act, are required either to surrender the benefit of the Act in contracting to sell supplies and revert to the business conditions of an earlier century.

We believe that to accomplish this, the decision of the Circuit Court of Appeals must be reversed and that, therefore, a writ of certiorari should issue in the present case.

The case is one of unusual hardship. The petitioner parted with its coal solely upon the security of Oil Corporation's agreement to give it a lien under the Act of Congress.

The coal for which its lien was upheld in the District Court, was actually delivered to and used by the libelled vessels and by reason thereof the vessels were kept afloat and in operation, contributing earnings to the Oil Corporation and its creditors, including the Seaboard Fisheries Company, the claimant herein, which pursuant to foreclosure proceedings, purchased the libelled vessels with knowledge that the petitioner asserted against them maritime liens for coal actually delivered to them and for which it had never been paid.

It is submitted, therefore, that this Court should grant the writ of certiorari asked for, in order that the error of the Circuit Court of Appeals should be corrected and the decision of the District Court sustaining the libellant's liens reinstated.

Respectfully submitted,

J. PARKER KIRLIN,
JOHN M. WOOLSEY,
F. C. NICODEMUS, JR.,
Of Counsel.

September, 1918.

NO. 6

58

SUPREME COURT, U. S.

FILED

OCT 5 1918

JAMES O. MAHER

CLERK

In the
Supreme Court of the United States,

October Term, 1918

Nos.

PIEDMONT & GEORGES CREEK COAL COMPANY
Libelant-Petitioner,
against

The Fishing Steamer **WALTER ADAMS** and others,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **HERBERT N. EDWARDS,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **ROLLIN E. MASON,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **WILLIAM B. MURRAY,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **MARTIN J. MARRAN,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **AMAGANSETT,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

(Consolidated Case.)

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI.**

(With opinion of the Circuit Court of Appeals)

ROYALL VICTOR,
RATHBONE GARDNER,
Counsel for Respondent.

CONTENTS

INDEX OF AUTHORITIES CITED

	page
STATEMENT OF FACTS	1-7
1. Respondent is a purchaser from a prior mortgagee	2
2. The contract for the sale of the coal	2
3. Shipments and deliveries under the contract	3
4. The orders for the coal	4
5. The alleged contract for a maritime lien	5
6. The alteration of the invoices	6
BRIEF	7-32
I. Libellant's claim to a statutory lien involves the proposition that the phrases "furnishing to a vessel" and "credit to a vessel" are synonymous	7-10
II. The phrase "furnishing to a vessel" indicates the active agency of the seller in effecting delivery	10-11
III. Cases under state statutes giving liens for supplies furnished "for" vessels are inapplicable	12-13
IV. Maritime liens are stricti juris. This principle applies with peculiar force in the case at bar	13-15
V. "Furnishing to" in the Act of 1910 necessarily means a delivery to and not a credit to the vessel	16-17
VI. There has been no delivery to the vessels within the meaning of the Act	18-24
VII. A maritime lien by contract would not be a statutory lien. Even if this were not so petitioner has not established a maritime lien by contract	25-30
VIII. Consideration of mercantile convenience should be addressed to the Legislature	30-31
IX. The analogy of priorities in railroad receivership cases is against petitioner	31-32
Opinion of Circuit Court of Appeals	33-45

INDEX OF AUTHORITIES CITED.

	page
Advance, The, 65 Fed., 766.....	27
Advance, The, 71 Fed., 987.....	27
Advance, The, 72 Fed., 793.....	27
Alligator, The, 161 Fed., 37.....	26
American Construction Co. vs. Jacksonville etc. Co., 148 U. S., 372.....	32
Astor Trust Co. vs. White & Co., Inc., 241 Fed., 57.....	15, 26
Aurora, The, 194 Fed., 559.....	14
Berwin-White Coal Mining Co. vs. Metropolitan S. S. Co., 166 Fed., 782 (on appeal, 173 Fed., 471)....	12
Bethulia, The, 200 Fed., 876.....	19
Cimbria, The, 156 Fed., 378.....	19, 27
Cora P. White, The, 243 Fed., 246.....	9, 15, 26
Cuddy vs. Clements, 113 Fed., 454.....	23
Dredge A. The, 217 Fed., 617.....	15
Diefenthal vs. Hamburg, etc., Co., 56 Fed., 397.....	27
Ely vs. Murray & Tregurtha Co., 200 Fed., 368.....	20
Fields vs. U. S., 205 U. S., 292.....	32
Fitz-Henry Smith, Jr., 24 Harvard Law Rev., 182, 200	11
Forsyth vs. Hammond, 166 U. S., 506.....	32
Freights of the Kate, The, 63 Fed., 707.....	27
Geisha, The, 200 Fed., 865.....	10, 13, 19
Grapeshot, The, 9 Wall, 129.....	17
Gregg vs. Metropolitan Trust Co., 197 U. S., 183.....	32
James T. Furber, The, 129 Fed., 808.....	27
James H. Prentice, The, 36 Fed., 777.....	24
Kiersage, The, 2 Curtis 421, (Fed. Cases No. 7762)....	12
Knickerbocker, The, 83 Fed., 843.....	26
Larch, The, 14 Fed., Cases, p. 1139 (2 Curt. 427)....	14
Lulu, The, 10 Wall, 192.....	17
Mary, The, 1 Paine 671.....	29
M'Rae vs. Bowers Dredging Co., 86 Fed., 344.....	24
Munn vs. The Columbus, et al., 65 Fed., 430.....	14, 26
Murphy Tugs, The, 28 Fed., 429.....	23
Newport, The, 114 Fed., 713.....	26
Patapsco, The, 13 Wall, 329.....	17
Plummer vs. Webb, 4 Mason, 380.....	26
Prince vs. Ogdensburg Transit Co., 107 Fed., 978.....	14
S. S. Overdale Co. vs. Turner, 206 Fed., 329.....	27
United Hydraulic Cotton Press vs. McNeill, Fed., Cas. No. 14404.....	24
Valencia, The, 165 U. S., 264.....	17
Vigilancia, The, 58 Fed., 698.....	18
Whitcomb vs. Metropolitan Coal Co., 122 Fed., 941.....	24
Worthington, The, 133 Fed., 725.....	24
Yankee, The, 233 Fed., 919.....	21

In the
Supreme Court of the United States,

October Term, 1918

Nos.

PIEDMONT & GEORGES CREEK COAL COMPANY
Libellant-Petitioner,
against

The Fishing Steamer **WALTER ADAMS** and others,
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **HERBERT N. EDWARDS,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **ROLLIN E. MASON,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **WILLIAM B. MURRAY,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **MARTIN J. MARRAN,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

The Fishing Steamer **AMAGANSETT,**
SEABOARD FISHERIES COMPANY,
Claimant-Respondent.

(Consolidated Case.)

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI.**

(With opinion of the Circuit Court of Appeals)

Statement.

It is true, as the petition says, that there is little or no dispute about the facts. Inasmuch, however,

(Note: The opinion of the Circuit Court of Appeals, Dodge, J., is printed at the end of the brief.)

as it seems to us that the petition and the statement of facts in petitioner's brief omit or slur over certain aspects of the transaction that we consider important, we submit the following condensed statement as the basis for the points to be made in our brief in opposition.

1. *Respondent stands in the position of a prior mortgagee.* Respondent is the purchaser at a receiver's sale under a mortgage given by the Oil Company, antedating the sale of the coal to it. No argument, we take it, is needed to show that if, against a furnisher of supplies, the rights of the vessel owner himself may sometimes differ from the rights of a prior mortgagee from him, then the respondent in this case stands in the shoes of such prior mortgagee.

2. *The contract for the sale of the coal.* The contract was an informal one. Judge DODGE, in his opinion, says that:

"It was never completely embodied in any written document."

Though this is true, the general terms of the prior oral agreement are at least clearly evidenced by two letters dated May 28, 1914 (Cl. Exs. 8 & 9, pp. 116, 117). These letters clearly show an agreement to supply the Oil Company with its coal requirements for the season at Promised Land and Tiverton. ("This is to confirm agreement for the furnishing of your coal requirements at Promised Land and Tiverton for the current season." Prices and grades of coal are specified. Ex. 8.) The Oil Company had factories in both these places at which it

used coal, and there cannot be the least doubt that the Coal Company knew this fact, and that both parties perfectly understood that the Oil Company might rightfully use any coal ordered and delivered under the contract either for its factories or for its vessels, as occasion required. It is, to be sure, quite probable that the vessel requirements were expected by both parties very largely to exceed the factory requirements (which they did). (As a matter of fact, of the coal delivered under the five shipments in question, between one-fifth and one-sixth was used in the factories, the remainder by the vessels—some, however, by vessels not libeled.) The point is that, under this contract, the Oil Company had the *undoubted right, at the very least, to appropriate (and it did appropriate) for its factories whatever coal these might require out of any shipment ordered*. We note also that the two above mentioned letters contain no reference whatever to any agreement or understanding with reference to a maritime lien for the coal supplied. The evidence shows that this understanding or agreement, whatever it may have been, was arrived at orally some three months before these letters were written (See record, pp. 26-27. Of this understanding later).

3. *Shipments and deliveries under the contract.* As orders for coal were given by the Oil Company under the contract, deliveries were made f. o. b. New York and New Jersey wharves. Judge DODGE's opinion states that

“the invoices and bills of lading relating to the shipments, indicate that delivery of all the

coal so shipped to the oil corporation took place at the libellant's loading piers."

We believe this statement is correct, though in fairness we should say that we do not think the documentary evidence shows whether the *barges* in which the coal was sent or shipped to Promised Land and Tiverton belonged to the Coal Company or the Oil Company. Mr. Meadows, the manager of the Oil Company, says he thinks two of the shipments were made in a barge owned by the Oil Company and three in barges owned by the Coal Company (p. 47).

It should be noted that in the original libels against the five vessels the deliveries are all alleged to have been made at Staten Island and Port Reading, N. J. (Rec., 202, 205, 248, 250, 286, 289, 324, 327, 362, 365).

4. *The orders.* The orders for the five shipments in question are the last five of the nine orders printed as Libellant's Exhibit 1 (pp. 100-102). It will be observed that these orders are all in the name of the Oil Company (see also Cl. Ex. 7, p. 115, a letter of the Oil Company, relative to one of the shipments), and that none of them specifies that the coal ordered or any part of it was for the use of any particular vessel, or for the use of vessels generally, as distinguished from the factories. The invoices similarly (in their original form) were all to the Oil Company, and the coal was also charged on the Coal Company's books to the Oil Company.

5. *Handling of the coal at Promised Land and Tiverton.* The coal on its arrival at these places was all put in the Oil Company's bins on its

wharves, where it remained until the steamers called for it or until it was used in the factories. *In the bins at Promised Land there were already 1,068 tons of coal.* The lien coal delivered at Promised Land (4,459 tons) was mixed with this, making a total of 5,527 tons. As to the shipments to Promised Land, therefore, there was no possible way of proving (and there was no attempt to prove) *just how much* of the lien coal was used on the steamers that coaled there. It *may* be that most or all of the original 1,068 tons went into the steamers, which would by so much have reduced the amount of lien coal used by them, and by so much increased the amount of lien coal used in the factories. Or *vice versa*. There is no telling. What the District Court did was to deduct 20 per cent. from the amount of coal shown to have been taken by each libeled steamer at Promised Land, the 1,068 tons being approximately one-fifth of the total of 5,527 tons.

6. *The alleged contract for a maritime lien.* We do not wish to be understood as denying that there was some agreement or understanding between the parties as to a maritime lien for the coal. Almost certainly there was. We take it moreover that on this petition for certiorari this Court will not go behind the finding of the Circuit Court of Appeals. The opinion of that Court states that

“The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the owner.”

Also:

“We regard the evidence as establishing at most such an understanding as the District Court found to have existed,—that ‘the law would afford a lien upon the vessels for the coal’,—that is, *according to the libellant’s present contention*, upon each vessel afterwards supplied, for the coal supplied to her” (italics ours).

We may point out, however, that if the agreement *was* really anything more than a mutual understanding that the law would give the supplier some sort of a lien, it was an informal understanding that there should be a lien *on the fleet as a whole for coal used by any vessel of the fleet* (See *Meadows, Rec. 27, 52*). It was on the theory of an express agreement for such a *fleet lien* that the first counts of libelant’s five original libels were drawn. The District Court held that such a fleet lien could not be created even by express agreement, and, as libelant did not appeal, this question is not now before this Court, though, as will appear, the authorities on the point are all squarely against petitioner.

7. *The subsequent alteration of the invoices by the parties.* We call attention to this incident merely that there may be no confusion in the minds of the Court. As already stated, the invoices were originally made to the Oil Company and not to any of its vessels. In September, 1914—after all the coal had been delivered and when the Coal Company was threatening libels against all of the Oil Company’s fleet—the Coal Company was induced to libel only the five best boats. In furtherance of this plan, the headings of the five original invoices (charging the coal to the Oil Com-

pany) were torn off and new headings pasted on, each new heading charging the coal to one of the five vessels to be libeled.

BRIEF.

Libelant-petitioner is now asserting a *statutory* maritime lien under the Act of June 23, 1910 (there being no other statute on the subject) and not a non-statutory maritime lien.

"The District Court has held that no maritime lien could be created apart from the statute. * * * No cross appeal was taken by the libelant and the only question before the Circuit Court of Appeals was whether in view of the understanding of the parties that the coal was furnished on the credit of the vessels * * * a lien was impressed upon the libeled vessels by force of the statute." (Brief, p. 17.)

POINT I.

The Act requires a "furnishing to" a vessel to be established, and expressly abolishes "credit to the vessel" as a requisite of a statutory lien. Nevertheless, libelant's claim to a statutory lien necessarily involves the proposition that these two phrases are synonymous.

There can, we submit, be no escape from this conclusion. The demonstration is as follows:

We have a contract for a season's supply of coal. It is perfectly understood and agreed that some of the coal is to be used by the buyer to coal his

fleet and some for shore purposes, according to the buyer's needs from time to time. The contract is silent as to whether *orders under it* for shipments shall specify a maritime or non-maritime use of the whole or a part of any particular shipment, and the orders under it make no such specifications, being merely for the owner's general requirements. These orders are filled by delivery to the owner, at the seller's wharves, as the Court has found, though we think it would be immaterial if they were delivered at the owner's wharves. At the owner's wharves the coal is unloaded, not into or alongside the vessels but into the owner's bins, in which it will await the *owner's* subsequent appropriation of it to his factories or to his steamers. It is known, moreover, to the seller that these bins may contain (and one of them does contain) other coal with which it will be perfectly permissible for the owner to mix the contract coal.

So much for the contract and its contemplated and actual carrying out, *eliminating everything in the nature of an agreement, express or implied, for a maritime lien.*

The contract itself is clearly not a maritime contract (the authorities are cited *infra*, pp. 26-27).

It is equally clear that the seller's deliveries under it of the coal to the owner and the owner's subsequent placing of some of it in his vessels do not constitute a furnishing (in the sense of a delivery) of the coal by the seller to the vessels. No authority has been or could be cited, either under the Act of 1910 or under the general maritime law, for such an astonishing proposition as the proposition that there is a furnishing of supplies to a vessel by a supplier where nothing more appears than (1) that the supplies have been sold to

the owner under a general contract which contemplates a non-maritime use of part of them, (2) that the deliveries under it have been made to the *owner* for his subsequent appropriation of the supplies to maritime or non-maritime uses as his needs require, and (3) that the owner moreover may rightfully mingle the goods with other goods of the same kind. And counsel's brief, of course, virtually concedes, though it nowhere expressly admits, that the transactions in question could not possibly amount to a furnishing to the vessels by libelant except for the added circumstance of the agreement or understanding between the parties that libelant should have a maritime lien. All the counts of all the libels allege a contract for a lien, a plain indication that petitioner's counsel recognized the necessity of proving a credit to the vessels in order to establish a lien under the Act.

In *The Cora P. White*, 243 Fed., 246, the facts were identical with the facts here, except that there was no evidence of an agreement or understanding that the vessels should be subject to liens. There, as here, the supplies were delivered to the owner on orders that specified no vessels, were stored by the owner, and subsequently appropriated, some to maritime and some to non-maritime uses. The libels were dismissed.

In short, libelant, in order to sustain its claim to a statutory maritime lien, must establish the necessary "furnishing to" the vessels *by proof of the very thing that the statute says it need not prove—namely, the giving of credit to the vessels*;—and the proposition of law necessarily asserted by petitioner is this: that under the Act of 1910 a furnishing of supplies to a vessel may be shown

by an agreement or understanding that credit is to be given the vessel, where, except for such an understanding, it is incontrovertible that there would be no such furnishing to the vessel. In other words, petitioner's position is that an agreement to "give credit to the vessel" and a "furnishing of supplies to the vessel" are interchangeable terms. A singular contention, truly, under a statute which expressly requires proof of one of these matters and expressly dispenses with proof of the other.

POINT II.

The phrase "furnishing to a vessel" is used in the Act in its accepted sense in the general maritime law as indicating the active agency of the seller in effecting delivery.

We think this proposition requires little argument. The cases under the Act in which the meaning of the expression "furnishing to a vessel" is discussed contain nothing whatever to indicate that the words have any other meaning than their well recognized meaning under the general maritime law. In *The Geisha*, 200 Fed., 865, a recent decision under the Act by the District Court for the District of Massachusetts, Judge DODGE said at p. 868:

"To maintain a lien under that Act for materials to be used in repair, the materialman must show them to have been actually 'furnished to' the vessel, and I think the intended meaning of that phrase as used in the Act can only be the meaning generally given to it in the maritime law."

There is no authority to the contrary, and, of course, the principle is settled that, generally speaking, a statute which uses a phase with a well-known technical legal meaning adopts that meaning.

We may also quote from an article on the Act by Mr. FITZ-HENRY SMITH, Jr., entitled "The New Federal Statute relating to Liens on Vessels," 24 Harv. L. Rev., 182, 200:

"And under the federal statute, as under the general maritime law, the things furnished must at least be 'appropriated' to the use of a designated vessel. For there can be no claim upon a given *res* unless it be shown that the necessities (or services) were furnished specifically to that *res*. * * *

"The Act of Congress is perhaps open to criticism for not defining the meaning of the term 'furnish.' That an explicit definition of this word would be beneficial may be admitted, for there is at present a conflict of authority upon the subject. Thus it is set forth in some cases that no lien can exist unless the supplies and repairs are actually used by or incorporated in the vessel; while others do not lay down so strict a rule. But the difficulty of determining just where the line should be drawn led to the omission of any definition in the law, and the courts, as heretofore, must decide upon the facts in each particular case. The view of Addison Brown, J., in *The Vigilancia*, seems to be the one now most generally recognized, namely, that 'There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship or else are brought within the immediate presence or control of the officers of the ship.'"

POINT III.

The phrase "furnishing to" does not make an eventual maritime use of the supplies the test, and decisions under state statutes giving liens for supplies, etc., furnished "for or on account of" vessels are no authority as to what constitutes a "furnishing to" a vessel under the Act of 1910.

Libelant's contention comes to this: That what would ordinarily be a furnishing of supplies *to an owner for his vessels* is changed to a furnishing *to the vessels* to which the supplies are later appropriated by the owner, by proof of an agreement or understanding that credit was given the vessels. Unless that is true under the general maritime law (as we shall show it is not) it is certainly not true under the Act. Had it been the intention of the Act to change the law in respect of what constitutes a furnishing to a vessel, as well to dispense with the necessity, which theretofore existed in certain cases, of proving a credit given to the vessel, the Act would certainly not have retained the well-known expression of the general maritime law emphasizing *the supplier's active agency in effecting the delivery*; but would have substituted for it some other form of words indicating that *the ultimate destination of the goods* was the test. For this purpose the draftsman of the Act had the precedent of a number of state statutes. Two statutes of this sort were involved in the two cases on which the District Court chiefly relied for its decision. *The Kiersage*, 2 Curt., 421, Fed. Cas. No. 7762, and *Berwind-White Coal Mining Company vs. Metropolitan S.S. Company*, 166 Fed., 782

(on appeal 173 Fed., 471). The Maine statute in *The Kiersage* gave a lien for performing labor or furnishing materials "for or on account of any vessels" building or standing on the stocks, etc. The New Jersey statute involved in the *Berwind-White* Case gave a lien for "work done or materials or articles furnished in this state for or towards the building," etc., of vessels. As Judge Dodge has pointed out in his opinion, statutes worded like these differ so materially from a statute which gives a lien for supplies furnished to vessels, that decisions under them cannot be regarded as authority on the question of what constitutes a furnishing to a vessel under the general maritime law. We think there is nothing to add to the opinion of Judge Dodge below on this subject and to his earlier language, referred to therein, in *The Geisha*, 200 Fed., 865, 868.

POINT IV.

Maritime liens are *stricti juris* and not to be extended by construction, analogy or inference. This rule applies with particular force in determining what is a sufficient delivery to the vessel under the Act, for the Act clearly distinguishes between *delivery* and *credit* to the vessel, requiring the one and discarding the other.

As Judge DODGE points out:

"When the statute was passed in 1910, no principles of the maritime law of the United States were more fully recognized or more firmly adhered to than those set forth in the

familiar statements by the Supreme Court in *Vanderwater vs. Mills* (The Yankee Blade), 19 How, 382, 389, to the effect that maritime liens are *stricti juris* because they may operate to the prejudice of general creditors and purchasers without notice, and that they cannot be extended by construction, analogy or inference."

The following additional quotations will suffice:

The Larch, 14 Fed. Cas., 1139 (2 Curt. 427) at 1141:

"A lien being an exception to the general rule, which entitles all creditors to participate equally in all the property of their debtor, and a maritime lien being also a *jus in re*, which goes with the thing into the hands of purchasers, and so is embarrassing to commerce, it is *stricti juris*; must be derived from some provision of positive or customary law, which clearly confers it in the case in judgment; and it cannot be made out by way of argument from analogy, nor from considerations of convenience. Such considerations are for the legislator alone."

Munn vs. The Columbus, 65 Fed., 430, 432:

"The courts are jealous of the extension of admiralty liens and more inclined to restrict than to extend them."

Prince vs. Ogdensburg Transit Company, 107 Fed., 978, 982:

"Maritime liens for repairs and supplies, being secret incumbrances, are not favored. They are allowed only upon grounds of commercial convenience and necessity."

The Aurora, 194 Fed., 559, 560:

"A maritime lien is a privileged one, secret in character, overriding all other liens or

transfers, possibly operating to the prejudice of creditors or purchasers without notice. In the nature of things it is *stricti juris*, and must be shown to exist."

And, on the question of statutory construction presented in the case at bar, this principle certainly should apply with peculiar force, for, while the statute is undoubtedly remedial with respect to one element—namely, the *contractual* element—of maritime liens, with respect to the other element—namely, the non-contractual unilateral act of delivery—it deliberately retains the familiar phraseology of the general maritime law. Let a material-man furnish supplies to a vessel on the order of the owner, and he obtains his lien even though he has never heard of the statute and knows nothing about his rights under it, unless it is affirmatively shown (see Sec. 4) that he has waived his right to a lien. It would be a strange construction of the Act—which so clearly distinguishes between the contractual and the non-contractual elements of maritime liens, discarding the one and retaining the other—if the retained non-contractual element had to be defined in terms of the discarded contractual one.

The decisions under the Act continue to invoke the rule of *stricti juris*.

The Dredge A, 217 Fed., 617, 637;

Astor Trust Co vs. White, 241 Fed., 57, 62;

The Cora P. White, 243 Fed., 246, 248.

POINT V.

The Act of 1910 necessarily uses the expression "furnishing to a vessel" in the sense of a *delivery* to and not in the sense of a *credit* to.

If this were not so, the Act would make nonsense, for it would read in effect:

"Whoever, on the order of the owner, furnishes supplies to a vessel *on the credit of the vessel* has a lien on the vessel, and it shall not be necessary to allege or prove that credit was given the vessel."

Whatever else, therefore, "furnishing to" means in the Act, it cannot possibly mean "crediting to."

Undoubtedly the maritime law notion of a furnishing to a vessel includes the idea both of a *delivery* to and of a *sale* to—a contract with, and so a credit to—the vessel. Prior to the Act the vast majority of the cases dealt with the question of furnishing to in its meaning of credit to; the question in them was whether there had been an express agreement (or whether an agreement could be implied), to give credit to the vessel, although the supplies had been *delivered* to the vessel in the most immediate manner. A credit to the vessel (a furnishing to in the contractual sense) usually had to be proved unless the goods were sold on the order of the master in a foreign port, even though they had been manually placed on board by the seller.

And, of course, the controversy, whether on this that or the other state of facts, there had been a sufficient showing of a furnishing to the vessel in this contractual sense was the very controversy

which the Act attempts to prevent from arising in the future by providing, namely, *that a furnishing to in the sense of a delivery to is alone sufficient to create a lien, and that a furnishing to in the sense of a credit to need not be shown.*

The proposition that petitioner has to establish, however, is the exact converse of this, namely, *that a furnishing to in the sense of a credit to dispenses with the necessity of showing a furnishing to in the sense of a delivery to.* Not a case to this effect has been cited.

Instead, we are cited to a host of pre-statutory cases *in all of which the immediate delivery of the supplies to the vessel was undisputed*, the question in dispute being whether, in spite of that fact, there had been a sufficient showing of a furnishing to in the sense of a credit to the vessel, the goods having been supplied to it in the home port or on the order of the owner. Cases of this sort in this court are:

The Grapeshot, 9 Wall., 129,

The Lulu, 10 Wall., 192,

The Patapsco, 13 Wall., 329,

The Valencia, 165 U. S., 264;

and numerous other cases in the lower Federal Courts have also been cited.

The question in the case at bar obviously is—What does the maritime law regard as a sufficient furnishing to a vessel in the non-contractual sense of a delivery to the vessel?

POINT VI.

The rule as to what constitutes a furnishing to a vessel in the sense of a delivery to her requires at the very least that specific goods be bought or ordered for a specific vessel and that the seller deliver them to the owner at some point in the course of an uninterrupted carriage to the vessel.

In the frequently cited case of *The Vigilancia*, 58 Fed., 698, 700, the rule with respect to the furnishing to the vessel (or as the Court there put it the "delivery to the ship") was stated as follows:

"There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship. *The Cabarga*, 3 Blatchf. 75; *Pollard v. Vinton*, 105 U. S. 7, 9-11; *The Caroline Miller*, 53 Fed. 136; *The Guiding Star*, Id. 936, 943, and cases there cited.

"Had the goods in question been lost while in transit from Jersey City to Roberts' Stores, where the ship lay, the steamship company might possibly have been personally liable for the goods; but plainly no lien for them could have arisen against the ship, because they would never have come to the benefit of the ship.' Per Nelson J. (*The Cabarga*, *supra*). No lien, therefore, arose when the goods were delivered to the truckmen in Jersey City, since the ship had not yet received the goods, and might never receive them. Something more had to be done, viz., to deliver them to the ship. As that delivery was an act necessary to the creation of a maritime lien, it follows that the 'furnishing to the ship,' so as to ac-

quire a lien, was only completed at the place where the ship herself actually was."

See also

The Cimbria, 156 Fed., 378, 382.

That the rule laid down in *The Vigilancia* has been somewhat relaxed in later cases we do not deny, but we do deny that it has ever been relaxed to the extent of holding a delivery to the ship to have been made where, when the delivery to the owner took place, there had been no identification of the vessel which was to use the supplies; and we also deny that it has ever been qualified by permitting an understanding that credit was to be given to the vessel (either to *the* vessel or to some as yet unascertained vessel), to convert what would otherwise not be a delivery to the vessel into such a delivery.

In *The Cimbria* (*supra*), it was held that, although credit had been given the vessel, nevertheless no lien had been acquired under the general maritime law, because the supplies had not been "furnished to" her. See also *The Bethulia*, 200 Fed., 876.

In *The Geisha* (*supra*), a lien was allowed under the Act of 1910 for a boiler which had been especially ordered and made for the vessel in question, and the sections of which had been delivered on the wharf alongside her. The vessel was attached at the suit of the owner's creditors, and the boiler sections therefore were never put on board. It was held that this constituted a sufficient furnishing to the vessel under the Act. Judge DODGE said at p. 867:

"It may not be necessary to prove that the materials have been actually incorporated into

the vessel; but I cannot doubt that they must appear to have been delivered to her, either on board her, or at least 'within the immediate presence and control of her officers,' as was held regarding supplies in *The Vigilancia* (D. C.), 58 Fed., 698, 700. See, also, *The Cimbria* (D. C.), 156 Fed., 378, 382. As this vessel was not in commission during the repairs, but alongside the libelant's wharf, and thus not in the actual custody of her officers, but rather of the libelant, to which custody, for the time being, she had been intrusted by her owner, delivery by the libelant on the same wharf may not unreasonably be regarded as the equivalent of delivery into the control of the vessel's officers * * *. In view of the facts that the libelant had furnished the sections on the wharf all ready to go on board, and that it would unquestionably have done the little remaining to do in order to get them on board, but for a condition of affairs for which the owner was solely responsible, I shall hold that it furnished the sections to the vessel within the meaning of the act, and allow the \$140 which it paid for them."

In *Ely vs. Murray & Tregurtha Company*, 200 Fed., 368, decided in the District Court by Judge Dodge, and affirmed on appeal by the Circuit Court of Appeals, an engine had been ordered for a gasoline launch by the owner. The libelant shipped the engine from Boston by public conveyance to New York, where the owner received it, paid the freight on it and had it sent to the yard in Brooklyn where the launch lay and where it was installed in her. The question of libelant's lien arose between libelant and the owner himself.

Judge DODGE, after referring to *The Vigilancia* and *The Cimbria* (*supra*), said at p. 369:

"Whatever might be the decision if the rights of parties other than the owner were to be affected by it, I am of opinion that an owner who has ordered materials or supplies for his vessel, has ordered them delivered to a carrier in order that they may reach her, has actually put them on board the vessel for which they were ordered after receiving them from the carrier, and has them on board her when the libel is filed, cannot be heard to say they have not been furnished to her in order to defeat a lien for them under the statute. *The Gracie Kent* (D. C.), 169 Fed., 893. I hold, therefore, that the libelant has a lien for the price of the engine and materials."

This *Tregurtha Company* case (in which the rights of a mortgagee were not involved) marks the extreme limit of the relaxation of the rule, with the possible exception of *The Yankee*, 233 Fed., 919 (C. C. A., 3), the case chiefly relied on by petitioner.

On the question chiefly discussed in *The Yankee*, namely, the claim of a lien for various supplies and necessities, the facts are identical with those in the *Tregurtha* case (*supra*), for the Court found that

"Each order specified these supplies to be for the Yankee, and in each instance supplies were forwarded to her pursuant to shipping instructions accompanying the order" (p. 921).

In addition to these supplies, however, coal had also been supplied the vessel under a contract to supply coal for the whole fleet, but it was expressly

found by the Court that in giving orders for deliveries under this contract

“The quantity to be supplied to and daily consumed by The Yankee was mentioned and considered by the parties, and that of the total amount of coal supplied, a definite portion was appropriated for and furnished to The Yankee within the rule of law applicable in such cases” (p. 927).

The facts as to the coal do not otherwise appear, but even if this quoted statement shows that the estimates of the Yankee's consumption was made at the time of the making of the original contract and that thereafter the owner appropriated to her the estimated amounts out of shipments made under orders not designated for and not going to specified vessels but delivered in the first instance to the owner's wharves, the facts are still a long way from the instant facts, for there was *an original specification of definite amounts of coal for a specified vessel*. Judge DODGE thinks that the decision stands for no more than for the proposition which he quotes from the opinion, namely :

“We hold that a materialman may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from their point of origin to the vessel side, *when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it*” (*italics ours*).

The question as to the lien for the coal was disposed of in one brief paragraph (p. 927), and, of the three cases cited (*The Kiersage* (*supra*), *The Murphy Tugs*, 28 Fed., 429, and *M'Rae vs Bowers Dredging Co.*, 86 Fed., 344), *The Kiersage* we have already shown to be wholly inapplicable, *The Murphy Tugs* was a lien for services *actually rendered to the vessel*, while the *M'Rae* case was another case under a state statute, and there again the coal was *actually delivered to the vessels*.

Petitioner relies strongly on this case of *The Murphy Tugs*. That was a case where there was a single contract for *services* as a diver and steam pump engineer, at specified daily wages, on the vessels of a fleet. The services, were actually furnished to the vessels libeled, and the particular services were furnished on the orders of the various masters. The only difficulty in the way of sustaining the libels was that the *original contract* was single. Services, unlike supplies, cannot be delivered to an owner for a vessel; they are rendered direct to the vessel, so that the case is exactly as if, under a general contract for a season's supply, the seller receives an order: "Please deliver into or alongside the Steamer Martin B. Marran 1,000 tons of coal under your contract with us." For the 1,000 tons so delivered the seller would undoubtedly have a statutory lien, for he has furnished the supplies *to the vessel on the owner's order*. Precisely such a pre-statutory case, under a contract for a season's supply of coal, was *Cuddy vs. Clements*, 113 Fed., 454 (C. C. A., 1), and there the lien was disallowed only because, the contract having been made with the owner at the port of his residence, the *then* necessary showing of a credit to the vessels

was held not to have been made. See also *Whitcomb vs. Metropolitan Coal Co.*, 122 Fed., 941.

A few other cases cited by petitioner may be noted here:

McRae vs. Bowers Dredging Co., 86 Fed., 344. Not only was the lien sustained under a state statute giving a lien for supplies "for" the use of vessels, but the supplies were actually delivered by libellant—

"* * * delivered in scows from which it was received on board the dredgers as required for use" (p. 349).

The James H. Prentice, 36 Fed., 777. Decided under a Michigan statute giving a lien for "materials furnished in or about the building or in repairing" vessels. The lumber was sold for a specified vessel, and it was actually *placed on deck or alongside for her use*. Some of it was subsequently misappropriated.

The Worthington, 133 Fed., 725. The controversy was between the libellant and the owner himself, and the decision was placed squarely on an estoppel. The vessel was in a foreign port, and the libellant, at the owner's request, advanced the necessary funds to load her on the credit of the vessel. *Held*, the owner was estopped from showing that he had diverted some of the funds thus procured from the purpose for which they were borrowed.

United Hydraulic Cotton Press vs. McNeil, Fed. Cas., No. 14404.

Petitioner's brief quotes, in substance, one of the headnotes to the case. The text nowhere indicates that any such point was discussed or passed upon.

POINT VII.

A maritime lien which, *because of the indisputable insufficiency of the delivery to the vessel*, must rest in contract, cannot be a statutory maritime lien under the Act of 1910. But even if this is not so there is no authority for the proposition that a maritime lien for supplies can be created on unspecified vessels to which supplies, delivered generally to the owner for non-maritime as well as maritime uses, have later been appropriated by the owner. And certainly not by any such agreement as has been shown in this case.

Petitioner is claiming a *statutory* lien, and it would seem plain from the previous discussion that a maritime lien for supplies which cannot possibly be established except by affirmative proof of an agreement to give credit to the vessel cannot be a *statutory* lien, the purpose of the Act being precisely to make the question of credit to the vessel wholly immaterial, except where a waiver is set up in defense. Petitioner's brief, in its elaborate argument on the facts and the inferences of a credit that may be drawn from them, and in its discussion of pre-statutory decisions on the question of credit or no credit, seems to us an excellent example of the very sort of discussion that the Act was intended to put an end to.

But if we are wrong in this, it is nevertheless plain that libellant's alleged contract will not avail it.

On this subject there is little to add to the opinion of Judge Dodge.

The cases are unanimous in denying the validity

of even express agreements for liens on a fleet under general contracts with the owners for supplies to them :

Astor Trust Co. vs. White Co., 241 Fed., 57;

The Cora P. White, 243 Fed., 216;

Munn vs. The Columbus, 65 Fed., 430;

The Knickerbocker, 83 Fed., 843;

The Alligator, 161 Fed., 37;

The Newport, 114 Fed., 713.

In *The Alligator* (*supra*), the Court said, p. 42 :

“A lien does not and should not attach for a supposed credit given to a vessel, unless the service or supplies are clearly shown to have been rendered or furnished to the particular vessel to which the credit is given.”

Moreover, as pointed out by Judge Dodge, the contract for the coal was clearly non-maritime and petitioner could not have sued the Oil Company in Admiralty for refusal to accept deliveries under it.

Plummer vs. Webb, 4 Mason, 380, 388, per STORY, J. :

“I cannot see that the whole contract is here of a maritime nature. There are mixed up in it obligations *ex contractu* not necessarily maritime and so far the contract is of a special nature. In cases of a mixed nature it is not a sufficient foundation for admiralty jurisdiction, that there are involved some ingredients of a maritime nature. The substance of the whole contract must be maritime.”

The James T. Furber, 129 Fed., 808 (D. C., D. Maine). Lease of a wharf. *Held*, not a maritime contract. The Court said p. 812:

"It has been repeatedly decided that to give the court jurisdiction over a contract as maritime, such contract must relate to the trade and business of the sea; it must be essentially and wholly maritime in its character."

See also

The Advance, 63 Fed., 766;

The Advance, 71 Fed., 987;

The Cimbria, 156 Fed., 378, 384-385;

and additional authorities cited in Judge Dodge's opinion.

Even if the contract had been one solely for the Oil Company's fleet, it would not have been a maritime contract. *Diesenthal vs. Hamburg etc., Co.*, 56 Fed. Rep., 397; *S. S. Overdale Co. vs. Turner*, 206 Fed., 339.

As Judge Dodge says:

"It may well be doubted whether, in a contract non-maritime in character as above, a maritime lien for supplies later to be furnished could ever be created by express stipulation therein on the part of the vessel owner."

Petitioner certainly has cited no authorities whatever for any such proposition, except the two cases *under state statutes* relied on by the District Court.

Petitioner cites *The Freight of the Kate*, 63 Fed., 707 (on appeal *The Advance*, 72 Fed., 793).

The cases involved an alleged express hypothecation of (1) freights, (2) vessels. Libellant had guaranteed letters of credit issued to the owner in the home port, to enable the owner to disburse its vessels in Brazil with moneys derived from the guar-

anted letters of credit. The owner was known to libellant to be insolvent. No vessels seem to have been specifically named. It seems clear that the supplies, etc., to pay for which the money had to be raised had already been furnished; in other words, the liens of the supply-men already existed,

“* * * for the purpose of enabling its vessels to pay their debts in Brazil and return to New York” (*The Advance*, p. 794).

“* * * means, by the aid of which the owners are enabled to discharge the liens resting upon the vessels in the foreign ports” (*The Advance*, p. 796).

The holding was that, as to the freights, the hypothecation was good against a prior mortgagee and that it created a valid maritime lien by express contract on the freight of all vessels of the line, and not only of the vessels which were supplied with the funds which libellant's guaranty enabled the owners to obtain. With respect to the vessels themselves, the holding was that there was no sufficient evidence of an express contract of hypothecation.

With respect to the freights, the opinion of Judge Brown in the District Court relies strongly on the fact that freights were not mentioned in the mortgage, and much reliance is also placed on the circumstance that freights are after-acquired property.

With respect to the liens claimed on the vessels, *libellants themselves* based their claim solely on the theory that they were subrogated to the rights of the original lienors, the persons who had furnished the supplies. The Court, however, held against this claim of subrogation, and also denied the liens on the ground that no express contract had been proven. It will be seen, therefore, that some of the

language of the Court which intimates that, by express contract, the parties to a maritime contract may create a maritime lien (taking precedence over the lien of a prior mortgagee) on the contracting owner's vessels substantially to suit themselves, is pure *dictum*. That such is not the law is sufficiently shown by the decisions in the fleet-lien cases, cited above.

Petitioner also (p. 66) cites *The Mary*, 1 Paine, 671. This was the case of a formal bottomry bond given by the owner to obtain money with which to purchase cargo. The owner had previously mortgaged the vessel, but had been allowed to remain in possession. *Held*, the lien of the bottomry bond had precedence over the lien of the mortgage. The decision goes on the express ground that the mortgage

"would not create any valid lien as against a subsequent bona fide purchaser or encumbrancer without notice * * *. *On the principles of the common law as well as of equity* the claim of Daniel Young must be postponed to that of libellant" (p. 677) (*italics ours*).

The above cases, therefore, are cases of express hypothecation in the nature of bottomry. It is certainly not necessary to discuss the question whether a formal contract in the nature of bottomry could have been made here for a lien on such of the vessels as the owner might subsequently supply with coal delivered under the general contract, for, even if the lien created by such an agreement would be a statutory lien under the Act of 1910 (which we submit it would not), no such express contract of hypothecation has been shown.

As Judge DODGE says:

"The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the owner."

POINT VIII.

Maritime liens are *stricti juris*. The reforms contemplated by the Act are clearly restricted to the contractual requirement of *credit* to vessels and do not extend to the non-contractual requirement of *delivery*, and considerations of supposed mercantile and commercial inconveniences caused by long established rules with respect to delivery should be addressed to Congress.

Counsel's arguments based on the alleged hardships to mercantile and commercial interests of a refusal to sanction this startling extension of the law of maritime liens should be addressed to Congress. Maritime liens are *stricti juris*. The purpose of the Act was to enlarge them by dispensing with proof of credit to the vessel where the supplies were not furnished in a foreign port on the master's order. It is now sought to dispense also with proof of delivery to the vessel. How? By evidence of credit given the vessel, thus throwing the whole subject again into the region of contract—of conflicting presumptions, doubtful inferences, and ambiguous parol understandings—from its floundering in which the Act of 1910 sought to rescue it. The opportunities for fraud and collusion to the preju-

dice of bona fide mortgagees need scarcely be pointed out under a rule by which supplies, apparently bought and paid for in a steamship company's warehouse, and awaiting the owner's subsequent appropriation of them to his maritime or non-maritime needs, may be given senior liens on his vessels. The rule requiring a delivery to the vessel exacts only a little self-help on the part of the supplier. If the owner calls for deliveries before the arrival of the vessels expected to consume the supplies, arrangements can easily be made in the great majority of cases for the segregation of the supplies on the owner's property in the custody of the supply man's custodian. Counsel's reference to war conditions is understandable, but the Act was passed long before any but an exceedingly small minority of Americans had even dreamt of an August 2, 1914. Nor have we heard of complaints about the Act by materialmen since the war.

POINT IX.

The analogy of claims in railroad receivership cases for priorities over mortgage liens is squarely against petitioner.

If this Court thinks that, in maritime lien cases, analogies from equity may be helpful or persuasive, we are greatly obliged to counsel for suggesting (brief, pp. 46-47) the analogy of the situation in railroad receivership cases where priority over mortgage liens has been asserted on behalf of materialmen who have furnished necessary supplies before the receivership. The supplies here were furnished before the receivership, the prop-

erty sought to be charged is corpus and not income, and there is no claim of a diversion of income. So far, therefore, as the analogy may be persuasive, we could not ask for better authority for the dismissal of the libels than the decision in *Gregg vs. Metropolitan Trust Company*, 197 U. S., 183.

We may also call attention again to the fact that respondent, as a purchaser at a foreclosure sale under a mortgage given long before the supplies were furnished, takes the mortgagee's title, Accordingly the sixth point of petitioner's brief (pp. 65-67) relative to estoppels against the owner is entirely beside the mark.

IN CONCLUSION.

We do not believe that the question in this case is of sufficient importance for the allowance of a certiorari. The question is not one of very general importance. The fact that the Act of June 23, 1910 has not yet been construed by this Court is quite beside the mark, since, as we have tried to show, there is no conflict between the decisions of the various Circuit Courts of Appeal on the point involved.

American Construction Co. vs. Jacksonville etc. Ry. Co., 148 U. S., 372, 383.

Forsyth vs. Hammond, 166 U. S., 506, 513.

Fields vs. U. S., 205 U. S., 292, 296.

Respectfully submitted,

ROYALL VICTOR,
RATHBONE GARDNER,
Counsel for Respondent.

Opinion of the Circuit Court of Appeals.

June 21, 1918.

DODGE, J. Maritime liens, asserted by the libellant Company upon each of the five vessels proceeded against in these cases, for amounts of coal alleged to have been furnished to them respectively during the fishing season of 1914, have been sustained as valid by the District Court. The claimant appeals from the decrees, contending that upon the facts proved the libellant acquired no maritime lien upon either of said vessels.

There is little or no dispute as to the material facts. They are for the most part sufficiently set forth in the opinion below. *The William B. Murray et al.*, 240 F. R. 147.

The libellant had no dealings regarding the furnishing of coal with either of the vessels libelled, through their officers in command; nor did any of its dealings with their owner regarding the coal it claims to have furnished relate to coal required at the time for use by either of said vessels, or to either of said vessels as distinguished from the other vessels included with them in a "fleet" of nineteen fishing steamers in all. Its dealings were only with the then owner of the entire fleet, referred to in the opinion below as the "Oil Corporation," which corporation was employing the fleet, in connection with lands and fishing factories belonging to it at Promised Land, on Long Island, in New York, and at Tiverton, Rhode Island, in a manufacturing business. At the two above-named places the vessels of the fleet delivered fish taken on their successive trips, and also coaled for further trips.

The libellant did not deliver any of the coal it claims to have furnished, directly to the five vessels libelled, or either of them; nor does it appear to have delivered any of said coal to the Oil Corporation directly, either at Promised Land or at Tiverton. The coal for which it claims liens came to those places in five different shipments, on various dates in May, June and July, 1914. Four of said shipments were delivered, as the opinion below states, at Promised Land, and one at Tiverton. But all the shipments came to those places on barges which had taken the coal on board at the libellant's loading piers near New York City, where the libellant had agreed to deliver it under a previous general agreement with the Oil Corporation so to deliver such coal as said corporation might require for its needs at Promised Land and at Tiverton, during said season, at agreed prices per ton; the delivery of all the coal being F. O. B. at said pier. The above facts regarding said shipments from the libellant's piers, not referred to in the opinion below, but appearing from the invoices and bills of lading relating to the shipments, indicate that delivery of all the coal so shipped to the Oil Corporation took place at the libellant's loading piers. In view of them we do not think it can be taken as proved that the libellant delivered any of said coal to the Oil Corporation under the above agreement for delivery, either at Promised Land or at Tiverton. But even if such delivery can be taken as proved there is no question that the coal included in the five cargoes was put on board the barges by the libellant at its New York piers without any understanding that it, or any definite part of it, was for either of the five

vessels libelled, or for any particular vessel of the fleet, or that all of it was for the vessels then composing the fleet. The first shipment, indeed, was expressly identified on the invoice as "coal for factory." There can be no doubt that, according to the understanding between the parties, some at least of the coal to be furnished would be needed in the factories, and the Oil Corporation was left, so far as any understanding with the libellant was concerned, to use the coal either in the factories or on the vessels of its fleet as it might subsequently desire.

If the libellant can be said to have delivered any of the coal comprised in these five shipments to the Oil Corporation, at Promised Land or at Tiverton, there was still no understanding as to the coal so delivered, or any definite part of it, that it was for either of the vessels libelled, or for all five of them, or even for all the vessels in the fleet as distinguished from the factories; and except that the coal was understood to be for use in its business as carried on at those places, its ultimate disposition was left as above for determination by the Oil Corporation subsequently to the making of the agreement regarding coal for the season, and subsequently to both its shipments and its delivery.

The five shipments were all charged by the libellant on its books to the Oil Corporation, without any entries charging any of it either to a specific vessel, or to specific vessels, or to the fleet; and they were billed to the Oil Corporation only, without any reference to vessels or fleet. When the first shipment to Promised Land arrived there, it was put into the Oil Corporation's bins, which

already contained 1,068 tons previously received and paid for by the Oil Corporation in full, under the same general agreement. The remaining three shipments received at Promised Land were dumped on the same pile, and from the entire pile the Oil Corporation used coal as needed, for all the vessels in its fleet of nineteen, and also for running its boiler plant on shore at that place. The shipment received at Tiverton went upon the Oil Corporation's pier there, and was used by it in part for ten of the vessels belonging to its fleet as they needed it, and in part by its boiler plant on shore at that place. Among the vessels which took on board and used some part of the coal included in the five shipments were the five vessels proceeded against in this case.

There was evidence tending to show how much coal each of the vessels took on board at Promised Land out of the entire stock at that place, and how much at Tiverton out of the entire stock there, after the five shipments had been received as above. The District Court determined the quantity of coal subsequently received and used by each vessel libelled, out of the coal included in said shipments, as follows: The respective quantities found to have been taken on board at Promised Land by each of said vessels respectively were reduced by an estimated proportion, being the proportion which the 1068 tons in the pile at Promised Land, before the first of the above shipments to that place had been added thereto, bore to the whole quantity in said pile; after the coal included in said shipments had been added. To the quantities so ascertained were then added the quantities found to have

been taken on board by each vessel libelled, at Tiverton.

Whether the libellant has shown itself entitled to maritime liens upon these vessels respectively for the respective amounts of coal thus ascertained is a question to be determined, not between it and the owner at the time of said vessels, but between the libellant and the present claimant, who had nothing to do with the libellant's agreement with the Oil Corporation, nor with ordering, receiving or using the coal shipped under it as above, and who did not become owner of said vessels until after they had received and used the coal. The Oil Corporation mortgaged its property in 1913, including these vessels, to secure its bonds. A bill to foreclose the mortgage so given had been filed in the same District Court wherein the decree now appealed from was rendered. There was a decree of foreclosure upon said bill, ordering the sale of the mortgaged property; and under it these and the other vessels of the fleet were sold April 24, 1915, before this suit was begun. The claimant was the purchaser of these vessels at the sale. The present libels were afterwards filed against them on June 16, 1915. While the sale did not divest valid maritime liens to which the vessels were subject when sold, the question of the validity of the liens asserted in this suit, is, so far as the present claim is concerned, a question as to the validity of secret or unrecorded encumbrances.

As to the libellant's original agreement with the Oil Corporation to furnish it with coal for the season, it was never completely embodied in any written document. It appeared that when this agreement was made there was a balance due for

coal from the previous year, and that the Oil Corporation was known to be largely indebted, in view whereof there was an understanding between the parties to the effect that the latter should have a maritime lien for the coal it was to furnish, not for the above five shipments specifically,—and upon the Oil Corporation's entire fleet or such vessels belonging to it as might thereafter use any of the coal,—not upon any specific vessels included in it. The District Court found it to have been understood by the parties “that the law would afford a lien upon the vessels for the coal and that the Coal Company would thus have security,” and also understood that “a large part of the coal furnished was to be used by vessels of the fleet.”

A contract cannot afford the necessary basis for a maritime lien unless it is maritime in its nature, so as to be cognizable in admiralty; and it is not enough that the contract is maritime as to some of its provisions, it must be maritime in its entirety. It was long ago said by high authority:

“In cases of a mixed nature it is not a sufficient foundation for admiralty jurisdiction that there are involved some ingredients of a maritime nature. The substance of the whole contract must be maritime.”

Story, J., in *Plummer vs. Webb*, 4 Mason, 380. The principle stated has since been repeatedly recognized and acted on. The following District Court decisions may be cited: *Diefenthal vs. Hamburg*, etc., 46 F. R. 397, 399; *Richard vs. Hogarth*, 84 F. R. 684; *The James T. Furber*, 129 F. R. 811; 157 F. R. 128; *Berton vs. Tietjens*, etc., Co., 219 F. R. 719; also the following decisions on appeal: *Harvey vs. Henry*, 86 F. R. 657; *Pacific*,

etc., *Co. vs. Leatham, etc., Co.*, 151 F. R. 440; *The Pennsylvania*, 154 F. R. 9.

Nor, even if the libellant's agreement with the Oil Corporation had covered no coal for factory use and had been an agreement only for the furnishing of such coal as the 19 vessels of its fleet might thereafter require during the season, could it be regarded as maritime in character. It did not "begin and end in the necessities of a particular vessel for a particular vessel for her own voyage" as a contract for supplies must, in order to be within admiralty jurisdiction. "Where owners group together a large number of vessels and make annual contracts for their supplies, the admiralty jurisdiction does not include them because the reason for it does not." *The Oil Corporation* could not therefore have sued the libellant in admiralty for failure to supply coal according to the agreement, nor could it have sued in admiralty for a refusal to take and pay for coal offered under the agreement. *Diefenthal vs. Hamburg, etc.*, 46 F. R. 397, already cited; *S. S. Overdale Co. vs. Turner*, 206 F. R. 339.

Part of the agreement is said to have been that the libellant should have the security of a maritime lien for such coal as it should furnish thereunder. It may well be doubted whether, in a contract non-maritime in character as above, a maritime lien for supplies later to be furnished could ever be created by express stipulation therein on the part of the vessel owner. It is at any rate clear, as pointed out in the opinion of the District Court, that no such security could be created upon the entire fleet, irrespective of what use should be made of the coal, nor upon particular vessels of the fleet

for coal furnished to the other vessels. *Astor, etc., Co. vs. E. V. White, etc., Co.*, 241 F. R. 57. Whenever maritime liens created by express contract with the owner have been sustained, the agreed liens have been upon vessels or freight specified at the time of the agreement, and for supplies or advances then agreed to be furnished to them specifically upon such specific credit, and afterward so furnished. The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the owner. The general manager of the Oil Corporation testified that, as he understood, a maritime lien on the entire fleet should be security upon which the libellant was to furnish coal, but to such an agreement no effect can be allowed, as has been stated. We regard the evidence as establishing, at most, such an understanding as the District Court found to have existed,—that “the law would afford a lien upon the vessels for the coal,”—that is, according to the libellant’s present contention, upon each vessel afterwards supplied, for the coal supplied to her.

Under the circumstances of this case, the libellant has a lien upon any one of these five vessels if it has proved that it “furnished” the coal received by her as above “to the vessel,” upon the order of her owner, within the meaning of the Act of June 23, 1910 (36 Stats. 604); but not in the absence of such proof. This, under the circumstances shown, we consider the only lien which the law afforded it.

Assuming that the libellant can be said, in the case of any one of the vessels, to have “furnished to” her the coal she received, in the statutory sense,

the furnishing may be said to have been "upon the order of her owner". But the question is, whether any such assumption can be made, in view of the facts that after turning over to the owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select, out of the fleet, the particular vessels by which the coal was to be received and used; and to determine the particular part of said quantity to be put on board each such vessel, as well as the particular time for putting it on board.

The Federal statute enlarged the maritime law as it had previously stood, by permitting the acquirement of maritime liens upon vessels, for supplies furnished to them, as well in their home ports as in foreign ports. This it accomplished by providing that proof of furnishing such supplies to a vessel should be sufficient proof of credit given to the vessel therefor,—definite proof of credit so given having always previously been held necessary, whenever what had been furnished had been furnished at the port of the owner's residence. We see no reason to believe that the statute intends the same result to be accomplished without proof that the supplies for which a lien is claimed have been furnished directly to the vessel, and not merely furnished to the owner without definite and distinct reference to her.

When the statute was passed in 1910, no principles of the maritime law of the United States were more fully recognized or more firmly adhered to than those set forth in the familiar statements by the Supreme Court in *Vandewater vs. Mills* (*The Yankee Blade*), 19 How. 382, 389, to the effect that maritime liens are *stricti juris*, because they may operate to the prejudice of general credi-

tors and purchasers without notice, and that they cannot be extended by construction, analogy or inference.

It was also well settled, prior to the statute, that credit given by a material man to a vessel was not proved unless supplies or materials intended for her were shown to have been furnished directly to her. While actual delivery by him on board, or (in the case of materials) actual incorporation in the vessel was not necessary under all circumstances to constitute such direct furnishing by him, mere delivery to the owner without special reference to the particular vessel, was not accepted as sufficient proof; there must have been at least such delivery to the vessel sought to be charged with a maritime lien as would have bound her under a contract of affreightment for transportation of the goods by her. See *The James H. Prentice*, 36 F. R. 777, 781, and cases cited; *The Vigilancia*, 58 F. R. 698, 700, and cases cited; *The Cimbria*, 156 F. R. 378.

In like manner, it had been held necessary, in order to establish an admiralty lien upon a vessel for maritime services rendered to her, that the services should appear to have been rendered to the particular vessel sought to be charged. Proof that they had been rendered under a contract with her owner for future services to a number of his vessels indiscriminately, at an agreed price per day or for the season, though including the particular vessel, was not accepted as sufficient for the purpose. *The Newport*, 114 F. R., 713; *The Alligator*, 161 F. R., 37. In the latter case it was said by the Court of Appeals for the Third Circuit:

"A lien does not and should not attach for a supposed credit given to a vessel, unless the

services or supplies are clearly shown to have been rendered or furnished to the particular vessel to which credit is given."

The statute of 1910 has not, in our opinion, made proof that the supplies for which a maritime lien is claimed were furnished directly to the particular vessel by the material man any less necessary than before, nor does it afford any ground for attaching any meaning other than that previously recognized to the expression "furnished to a vessel." The decisions made since the statute was passed have insisted upon the same necessity and have given the same effect to the words quoted. See *The Geisha*, *The Benthulia*, 200 F. R. 865, 876; *The Astor, etc., Co. vs. White, etc., Co.*, 241 F. R., 47; *The Cora P. White*, 243 F. R., 246.

The statute with which we are here concerned must thus be regarded as differing materially in its terms from State statutes purporting to give liens,—which may or may not be maritime liens,—for supplies or materials furnished "for" or "on account of" a vessel, or for materials furnished "in or about, or during, her construction," like the Maine statute considered in *The Kiersage*, 2 Curtis, 421, or the Massachusetts, Michigan and Virginia statutes referred to in *The Geisha*, 200 F. R., 865, 867, 868. In *Berwind-White, etc., Co. vs. Metropolitan, etc., Co.*, 166 F. R., 784; 173 F. R., 271, referred to in the opinion below, the Court of Appeals for this Circuit sustained liens claimed for machinery which had gone into each of two vessels respectively while being constructed under a single contract to furnish machinery for both, but which did not appropriate any of it specifically to either. The liens so sustained, however,

relating as they did to construction, were not maritime liens; nor were they asserted in an admiralty court. See 173 F. R., 480. The decision sustaining them, made in an equity suit, gave effect to a New Jersey statute with reference to which the machinery had been contracted for, which statute purported to secure by a lien any debt contracted by the owner of a vessel "on account of" any materials furnished "for or towards the building, repairing, furnishing or equipping such vessel." 166 F. R., 785. But the agreement here relied on must be taken to have had reference to the terms of the above Federal statute, and the parties to have understood that "the law would afford a lien" upon any one vessel of the Oil Corporation fleet for such coal only as might be "furnished to" her according to the accepted meaning of that expression. The question here is whether compliance with the terms of that statute is proved, not whether any underlying equity can be found which might support a lien in the libellant's favor.

We are unable to believe, in view of all the above, that the provisions of the statute can properly be understood in the less restricted sense accepted by the District Court, according to which, although the libellant had obtained no lien upon any vessel in the Oil Corporation's fleet when it parted with its coal by delivery to said corporation, liens in its favor might afterward be created by the Oil Corporation's subsequent acts in selecting particular vessels out of said fleet to receive portions of the coal which had been so delivered.

Where specific supplies or materials have been furnished to the owner upon a distinct understanding that they were for a specified vessel and the owner has, after delivery to him, appropriated

them to the vessel so designated between the parties, they have been held to have been furnished to her in the sense of the statute; and maritime liens for them under it have been sustained. *Ely vs. Murray, etc., Co.*, 200 F. R., 368; *The Yankee*, 233 F. R., 919.

The Court of Appeals for the Third Circuit was careful, in the case last cited, to limit its decision as follows:

"We hold that a material man may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from their point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it."

Further than this no Court had gone, in interpreting the provisions of the statute here in question, prior to the decision here appealed from. We are obliged to regard the construction adopted by the Court below as one not intended by the statute.

We, therefore, hold that the District Court erred in sustaining the liens asserted, upon the evidence before it. This conclusion renders it unnecessary to consider certain other errors assigned.

The decree of the District Court is reversed, and the cases are remanded to that Court, with instructions to dismiss the libels. The appellant in each case recovers its costs of appeal.

Office Supreme Court, U.
FILED

JAN 19 1920

JAMES D. MAHER,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1919.

No. [REDACTED]

58

PIEDMONT & GEORGE'S CREEK COAL COMPANY,

Petitioner,

vs.

SEABOARD FISHERIES COMPANY,

Claimant, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

**BRIEF AND ARGUMENT OF COUNSEL FOR PIEDMONT & GEORGE'S
CREEK COAL COMPANY, PETITIONER.**

Frank S. Woolsey

JOHN M. WOOLSEY,
F. C. NICODEMUS, JR.,
H. BRUA CAMPBELL,

Of Counsel.

CONTENTS.

	PAGE
INDEX OF AUTHORITIES CITED.....	III
STATEMENT.....	1 to 21
Nature of Proceedings.....	1
The facts upon which the action was founded.....	5
Explanation of proceedings in the District Court.....	13
Decision of the Lower Courts.....	16
ARGUMENT.....	21 to 74
FIRST POINT: THE ACT OF JUNE 23, 1910, AFFORDS A MARITIME LIEN FOR SUPPLIES FURNISHED TO A VESSEL AND WHERE COAL IS DELIVERED TO THE OWNER OF A FLEET OF VESSELS FOR DISTRIBUTION AMONG THE VESSELS OF THE FLEET UPON AN EXPRESS STIPULATION THAT THE DELIVERY IS MADE UPON THE CREDIT OF THE VESSELS AND NOT UPON THE CREDIT OF THE OWNER A LIEN ATTACHES TO EACH VESSEL FOR THE COAL ACTUALLY DISTRIBUTED TO AND USED BY IT.....	21
SECOND POINT: THE LIEN ACT WAS INTENDED TO BROADEN AND INCREASE THE SECURITY OF PERSONS FURNISHING SUPPLIES TO VESSELS, NOT TO NARROW OR CIRCUMSCRIBE IT, AND HENCE SHOULD HAVE AN ENLIGHTENED CONSTRUCTION TO MEET MODERN NEEDS.....	35
THIRD POINT: IT IS NOT NECESSARY IN ORDER TO IMPRESS A MARITIME LIEN ON A VESSEL THAT THE SUPPLIES BE ACTUALLY DELIVERED ON BOARD THE VESSEL BY THE PERSON WHO SUPPLIES THEM.....	37

II

	PAGE
FOURTH POINT: IT IS SETTLED LAW THAT AN OWNER MAY BY AGREEMENT, EXPRESS OR IMPLIED, CREATE A MARITIME LIEN ON HIS VESSEL FOR SUPPLIES FURNISHED.....	38
FIFTH POINT: AGREEMENTS FOR A GENERAL LIEN SUCH AS WAS HERE SHOWN HAVE FREQUENTLY HAD JUDICIAL APPROVAL, AND THE FACT THAT THE SUPPLIES HAVE BEEN FIRST CHARGED TO THE OWNER ON THE SUPPLIER'S BOOKS IS IMMATERIAL.....	43
SIXTH POINT: AS BETWEEN THE OWNER OF A VESSEL WHO AGREES TO GIVE A MARITIME LIEN FOR MONEY OR SUPPLIES AND THE PERSON FURNISHING THE MONEY OR SUPPLIES ON THE CREDIT OF THE VESSEL, THE OWNER IS ESTOPPED TO DENY THAT THE MONEY OR SUPPLIES WERE ACTUALLY USED FOR THE VESSEL.....	54
SEVENTH POINT: THE DECISION OF THE DISTRICT COURT BELOW IN REGARD TO THE APPLICATION OF THE SUM OF \$2,000 TO THE SATISFACTION OF INDEBTEDNESS NOT COVERED BY THE LIBEL HEREIN WAS CORRECT.....	56
LAST POINT: THE DECREE OF THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED AND THE DECISION OF THE DISTRICT COURT SUSTAINING THE LIBELANT'S LIENS SHOULD BE REINSTATED WITH A PROVISION FOR RECOVERY BY THE PETITIONER OF INTEREST FROM THE DATE OF THE DECREE IN THE DISTRICT COURT AND WITH COSTS OF ALL PROCEEDINGS IN ALL COURTS TO THE LIBELANT.....	74

III

INDEX OF AUTHORITIES CITED.

	PAGE
Advance, The, 63 Fed. 726, 72 Fed. 793.....	48
Alaskan, The, 227 Fed. 594.....	39
Ammon v. The Vigilancia, 58 Fed. 698.....	37
Astor Trust Co. v. White, 241 Fed. 57.....	49
Berwind-White C. M. Co. v. Met. S. S. Co., 166 Fed. 784, 173 Fed. 471.....	19, 29
Cimbria, The, 214 Fed. 128.....	38
Cohens v. Virginia, 6 Wheat. 264.....	72
Coons v. Tome, 9 Fed. 536.....	69
Cora P. White, The, 243 Fed. 246.....	30
Cuddy v. Clement, 115 Fed. 301, 53 C. C. A. 94....	31
D. & H. Canal Co. v. The Alida, 7 Fed Case No. 399	37
Ella, The, 84 Fed. 471.....	43
Ely v. Murray & Tregurtha Co., 200 Fed. 369, 118 C. C. A. 520.....	31
Emily Souder, The, 17 Wall. 666.....	43
Erastina, The, 50 Fed. 126.....	47
Field v. Holland, 6 Cranch. 8.....	70
Fortuna, The, 213 Fed. 284.....	40
Freights of the Kate, The, 63 Fed. 707.....	45, 47
George Dumois, The, 68 Fed. 926.....	39
Grapeshot, The, 9 Wall. 129.....	34, 43
Greenleaf on Evidence, 15 Ed., Secs. 530-5 3.....	67, 69
Havana, The, 54 Fed. 261.....	42
J. E. Rumbell, The, 148 U. S. 1.....	48
James Guy, The, Fed. Case No. 7195.....	47, 49
James H. Prentice, The, 30 Fed 277.....	57

IV

	PAGE
Kalorama, The, 10 Wall. 208.....	38, 43, 47, 52
Kiersage, The, 2 Curt. 421, Fed. Case No. 7762....	19, 24, 29, 32, 35, 55
Kimball, The, 3 Wall. 37.....	47
Leeds v. Gifford, 5 Atl. Rep. 798.....	67
Lien Act of June 23, 1910.....	2, 21, 23, 35, 40, 55
Lower Coast Tpn. Co. v. Gulf Ref. Co., 211 Fed. 336.	44
Lucille, The, 208 Fed. 424.....	31
Lulu, The, 10 Wall. 192.....	34
Mary, The, 1 Paine, 671.....	55
Mary Chilton, The Schooner, 4 Fed. 847.....	54
Mary Morgan, The 28 Fed. 199.....	46
Mayor, etc., v. Patton, 4 Cranch 417.....	67, 70
McCartney v. Buck, 12 Atl. Rep. 720.....	67
McRae v. Bowers Dredging Co., 86 Fed. 344....	24, 32, 33
Murphy Tugs, The, 28 Fed. 429.....	24, 32, 33
National Bank v. Mechanic's Bank, 94 U. S. 437...	71
Newport, The, 107 Fed. 744, 114 Fed. 713.....	43
Nichols, Shepherd & Co. v. Knowles, 17 Fed. 495..	70
Oceana, The, 244 Fed. 80.....	35
Parker v. Green, 8 Metcalf 144.....	67
Patapsco, The, 13 Wall. 329.....	43, 45, 47, 49
Pearse v. Walker, 103 Ala. 253.....	68
Pennsylvania Co., Appellant, 7 Atl. Rep. 72.....	67
Peters v. Anderson, 5 Taunt. 596.....	67
Philadelphia, The, 75 Fed. 684.....	43
Robert Dollar, The, 115 Fed. 218.....	54
Rosenthal, The, 57 Fed. 254.....	46

V

	PAGE
St. Jago de Cuba, The, 9 Wheat. 409.....	50
Schuelenburg v. Martin, 2 Fed. 749.....	70
Small v. Olden, 10 N. W. Rep. 737.....	68
South Coast, The, 247 Fed. 84.....	40
Stroma, The, 3 C. C. A. 530, 53 Fed. 281.....	47
Surprise, The, 129 Fed. 873.....	43
Terhune v. Cotton, 12 N. J. Eq. Rep. 238.....	68
United Hyd. C. P. v. Alexander McNeil, Fed. Case No. 14404.....	54
United States v. January, 7 Cranch 572.....	70
Upham v. La Favour, 11 Metcalf 185.....	67
Valencia, The, 165 U. S. 264.....	43, 52
Vigilancia, The, 58 Fed. 698.....	51
Volunteer, The, Fed. Case No. 16991.....	47
Worthington, The, 133 Fed. 725.....	43, 53, 54
Wyoming, The, 36 Fed. 494.....	53
Yankee, The, 233 Fed. 917.....	19, 23, 31, 32, 55

Supreme Court of the United States,

OCTOBER TERM, 1919.

No. 211.

PIEDMONT & GEORGE'S CREEK COAL
COMPANY,

Petitioner,

VS.

SEABOARD FISHERIES COMPANY,
Claimant, etc.

WRIT OF CERTIORARI TO
THE UNITED STATES CIR-
CUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

BRIEF AND ARGUMENT OF COUNSEL FOR PIEDMONT & GEORGE'S CREEK COAL COMPANY, PETITIONER.

STATEMENT.

(a) *Nature of proceedings.*

This case comes before this Court on a writ of *certiorari* to the United States Circuit Court of Appeals for the First Circuit to review a decree of that Court reversing a decree of the District Court of Rhode Island and remanding the case to said District Court with a direction to dismiss the libels. *Record*, p. 214.

The opinions in the Courts below are reported in the District Court *sub nomine The William B. Murray, et al.*, 240 Fed. Rep. 147, and in the Circuit Court of Appeals *sub nomine The Walter Adams, Seaboard Fisheries Company vs. Piedmont & George's Creek Coal Company*, 253 Fed. Rep. 20.

It is contended by the Petitioner, the libellant in the District Court and the prevailing party in that Court, that the decision of the Circuit Court of Appeals for the First Circuit (opinion written by Judge Dodge) places an erroneous and subversive construction on the Act of Congress of June 23, 1910, 36 Stat. 604*, governing Maritime Liens, rendering the Statute inoperative in an important class of cases it was intended to reach.

This case is a consolidated cause consisting of a series of libels brought by the Piedmont & George's Creek Coal Company, a Maryland corporation, hereinafter referred to as the Petitioner, against the fishing steamers *William B. Murray, Roland E. Mason, Herbert N. Edwards, Martin J. Marron, Amagansett, Walter Adams, Alaska, Ari-*

*Act of June 23, 1910, c. 373, 36 Stat. 604.

SEC. 1. Any person furnishing repairs, supplies, or other necessities, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding *in rem*, and it shall not be necessary to allege or prove that credit was given to the vessel.

SEC. 2. The following persons shall be presumed to have authority from the owner or owners to procure repairs, supplies, and other necessities for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

SEC. 3. The officers and agents of a vessel specified in section two shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser

zona, *George Curtiss*, *Montauk*, *Quickstep*, and *Ranger*, to recover the sum of \$17,850.75 with interest, for coal furnished on the credit of the said fishing steamers at the request of their then owner, the Atlantic Phosphate & Oil Corporation, herein referred to as the Oil Corporation, during fishing season, 1914.

The coal in question had been furnished by the Petitioner in boat load lots for use by the Oil Corporation's steamers at two coaling stations of the Oil Corporation—one at Promised Land, New York, and one at Tiverton, Rhode Island—on an agreement that the Petitioner should have a lien therefor on all the vessels of the Oil Corporation's fleet. *Record*, pp. 16, 28, 54.

The first appearance of the Petitioner herein was by way of intervening libels or petitions in five libels theretofore filed against five vessels, the *Edwards*, the *Murray*, the *Marron*, the *Mason* and the *Amagansett*, which were then under arrest in libels brought by other parties and against which the Oil Corporation had requested the libellant to enforce its lien instead of libelling the whole fleet.

in possession of the vessel, but nothing in this Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

SEC. 4. Nothing in this Act shall be construed to prevent a furnisher of repairs, supplies, or other necessities from waiving his right to a lien at any time, by agreement or otherwise, and this Act shall not be construed to affect the rules of law now existing, either in regard to the right to proceed against a vessel for advances, or in regard to laches in the enforcement of liens on vessels, or in regard to the priority or rank of liens, or in regard to the right to proceed *in personam*.

SEC. 5. This Act shall supersede the provisions of all state statutes conferring liens on vessels in so far as the same purport to create rights of action to be enforced by proceedings *in rem* against vessels for repairs, supplies, and other necessities.

These five intervening libels came on for trial on June 14, 1915, and testimony was taken on that date in open court.

The five libels mentioned each contained two counts:

(1) for such share of the general lien indebtedness of the fleet of the libelant as the Oil Corporation had asked the libelant to enforce against the libelled vessels, and

(2) *for coal actually used by the particular vessel libelled.* *Record*, pp. 2, 3, 43, 118, 119, 146, 147, 170, 171, 193, 194, 216, 217.

During the progress of the trial the District Judge expressed a doubt as to the feasibility of holding five vessels for supplies furnished to vessels other than those libelled. *Record*, p. 44. The Petitioner, thereupon, libelled the seven other fishing steamers above mentioned which were the only other vessels of the fleet then within reach of process. *Record*, p. 1.

On June 21, 1915, on motion which was contested, leave was granted to the libelant to sever the intervening libels or petitions filed in the first five causes from their principal proceedings and to consolidate the said five petitions with the new libels. An appropriate order was duly entered in each of the five causes mentioned and in the new cause. *Record*, pp. 127, 153, 176, 199, 222.

Thereafter, pursuant to stipulation, the testimony which had been taken in the five libels was put into the consolidated cause together with certain additional facts and testimony. *Record*, pp. 55, 56.

The consolidated cause, therefore, consisted of libels against all the fishing vessels of the fleet of the Oil Cor-

poration which were available within the jurisdiction of the District Court when the proceedings were begun. *Record*, pp. 55, 56.

(b) *The facts upon which the action was founded.*

The facts of this case are not in dispute.

As stated by Judge Dodge at the outset of his opinion written for the Circuit Court of Appeals:

"There is little or no dispute as to the material facts. They are for the most part sufficiently set forth in the opinion below. *The William B. Murray, et al.*, 240 Fed. Rep. 147."

The facts are quite fully stated also in the opinion of Judge Dodge. *The Walter Adams*, 253 Fed. 20. Much that is stated in Judge Dodge's opinion is, however, inaccurate in detail and in any event does not bear upon the construction of the Act of Congress and is therefore not material.

The facts upon which the Circuit Court of Appeals reached the determination which is here to be reviewed may be briefly stated:

The Atlantic Phosphate & Oil Corporation, a body corporate created under the laws of New York, herein called the Oil Corporation, owned and operated on the Atlantic Seaboard a fleet of 19 steam fishing vessels, of which 17 were actually in service at the time of the transaction involved in this litigation. *Record*, pp. 16, 21.

The fleet had its principal bases at Tiverton, Rhode Island, and Promised Land, New York, where factories of the Oil Corporation were located and where its vessels

came from time to time to take on coal and other supplies. *Record*, p. 21.

All the property of the Oil Corporation, including its fleet of vessels above mentioned, was subject to the lien of a mortgage to the Astor Trust Company as Trustee, securing an issue of bonds which were outstanding when the Oil Corporation and the Petitioner entered into the arrangement underlying the present proceeding. *Record*, p. 55.

The mortgage was foreclosed under a decree dated March 8, 1915, and the vessels were purchased by the claimant, the Seaboard Fisheries Company, at an equity sale in receivership proceedings, and consequently were subject to any valid maritime liens thereon held by the Petitioner. *Hudson v. New York & Albany Transportation Company et al.*, 180 Fed. Rep. 973, C. C. A. 2nd Circuit. *Record*, p. 56.

The maritime liens asserted by the Petitioner rest upon the following facts:

In February, 1914, the Oil Corporation was indebted to the Petitioner in the sum of \$3,800 for which indebtedness, incurred in the summer of 1913, a note secured by bonds of the Oil Corporation was given. *Record*, pp. 15, 31.

At that time the Oil Corporation had between \$75,000 and \$100,000 of overdue accounts payable on its books owing to various creditors, which dated back to the previous year, and which it was unable to pay. *Record*, p. 15.

It was on the verge of a receivership and existed as a going concern only by the sufferance of its creditors. *Record*, pp. 15, 16. These facts were known to the Peti-

tioner, whose President had issued orders not to extend any further credit to the Oil Corporation. *Record*, pp. 15, 20, 21.

The Petitioner tried unsuccessfully to collect from the Oil Corporation the balance due for 1913. *Record*, p. 16.

The Oil Corporation had a total of nineteen fishing vessels in its fleet, all of which consumed coal, and it was necessary that coal be obtained in order that their vessels might continue in operation to secure fish for the manufacture of oil at the Oil Corporation's plants. *Record*, pp. 15, 16. They tried to obtain coal from the Petitioner by giving as collateral certain bonds of the Oil Corporation held in their treasury unsold, but the Petitioner was unwilling to make a contract based on the bonds as the only security. *Record*, p. 16.

Some time in the latter part of February or the early part of March, 1914, Mr. Bohannon, then the New York representative of the Petitioner, had a conversation with Mr. Meadows, Vice-President of the Oil Corporation, in the course of which Mr. Meadows told Mr. Bohannon that his understanding of the law was that the Oil Corporation had a perfect right to pledge the credit of the steamers, themselves, in order to obtain coal with which to operate them and that if the Petitioner would furnish coal the Oil Corporation would be willing to secure such deliveries by a maritime lien on all their steamers. *Record*, pp. 16, 17:

In this connection we quote the following from the testimony of Mr. Thomas C. Meadows, Vice-President and General Manager of the Oil Corporation, *Record*, pp. 16, 17.

"Q. 15. Did Mr. Bohannon call on you any time during February 1914, in an attempt either

to collect this balance or make some working arrangements with you in regard to it?

Ans. He called regarding his account. I endeavored to make an arrangement with him for coal for the succeeding season.

Q. 16. Did you take up the question of coal for the season of 1914?

Ans. I did.

Q. 17. What did you offer him with regard to that coal, in your first proposition?

Ans. I told him that the company still had some of the bonds in its treasury such as had been pledged to secure his previous year's account, and on purchases for the year 1914 if he would be satisfied with those bonds as collateral we could give them as security.

Q. 18. What was Mr. Bohannon's reply to you? Did he have to refer back to some one?

Ans. He said he would refer it to Mr. Brophy, the president of the Company.

Q. 19. Did you afterwards see Mr. Bohannon?

Ans. Yes. Mr. Bohannon returned some two weeks later, I think, and reported Mr. Brophy was not willing to make a contract based on the bonds as the only security.

Q. 20. What further transpired?

Ans. I told him, as I understood the law, that we had a perfect right to use the credit of the steamers in the acquisition of coal and if he would be willing to furnish coal we would be perfectly willing that he hold and maintain a maritime lien on the steamers.

Q. 21. Was that of the entire fleet?

Ans. Yes; on all the boats.

Q. 22. Well, what happened thereafter?

Ans. He referred that to Mr. Brophy and Mr. Brophy accepted the proposition on that basis.

Q. 23. That was a maritime lien on your entire fleet should be security on which he was to furnish coal?

Ans. Yes.

Q. 24. That was your understanding of it?

Ans. That was my understanding of it".

No formal writing evidenced the undertaking, but subsequent letters were exchanged which referred to an agreement or understanding which conclusively proved that the matter was thoroughly understood by both parties. *Record*, pp. 17, 54, 57-60.

The agreement to furnish coal, therefore, was entered into upon the express understanding that for the coal furnished the libelant would get a maritime lien upon *all the steamers owned by the Oil Corporation*. Mr. Meadows further testified upon cross-examination as follows. *Record*, p. 24:

"Q. 109. And up to that time your agreement with the Piedmont Company had been that they should have a lien upon your vessels?

Ans. Upon all the vessels.

Q. 110. Up to that time no special vessels had been mentioned?

Ans. Yes, each had been mentioned.

Q. 111. Each of the 19?

Ans. Each of the 17."

Pursuant to the above arrangement and in reliance upon the Act of Congress, the Petitioner delivered to the Oil Corporation, primarily if not exclusively, for the use of its 17 fishing vessels then in service and in order to enable it to keep its said vessels at sea 5,320 tons of coal of the agreed value of \$17,854.27. *Record*, pp. 37, 106.

Nine cargoes of coal were furnished by the Petitioner in pursuance of the above agreement (Record, p. 17). Of the nine shipments only two were paid for (Record, pp. 17, 39-40). These were the third and fourth shipments made under the agreement and the sum paid was \$3,524.40 for 1,068 tons delivered at Promised Land. *Record*, p. 17.

For the first two cargoes shipped under this agreement notes were given, to which bonds of the Oil Corporation were attached as collateral. These notes were discounted at a bank by the Petitioner, thus permitting it to have the use of the money represented by the two cargoes. *Record*, p. 18.

The last five cargoes shipped under the above agreement contained the coal involved in the present case and were delivered in the months of May and June with specific dates for cash settlement stipulated. No notes were given and the cargoes were furnished solely on the agreement to give a maritime lien on the fleet as security. No part of the coal covered by these five shipments has been paid for. *Record*, p. 17.

When the bills for the last five shipments became due and were not paid, demand was made on the Oil Corporation and it earnestly requested that the Petitioner should not seek to enforce its lien against the vessels for a few days. The Petitioner complied with this request because it feared that any summary action on its part would result in insolvency of the Oil Corporation. *Record*, p. 18.

During this period of forbearance the Oil Corporation went into the hands of a receiver. *Record*, p. 19.

The coal was shipped at the expense of the Petitioner

by rail to railway terminal points at St. Georges, Staten Island, and Port Reading, New Jersey, where it was placed by the rail carrier upon barges for delivery to the Oil Corporation. *Record*, p. 64.

These barges were floated to Tiverton, Rhode Island, and Promised Land, New York, where the coal was dumped in the bins for distribution among the vessels of the Oil Corporation's fleet arriving from time to time to take on supplies. *Record*, pp. 28, 64.

The Petitioner did not control or direct the distribution of the coal, but merely undertook to replenish the bins at Tiverton and Promised Land on orders sent to it from time to time by the Oil Corporation, leaving the distribution among the vessels of the coal to the agency of the Oil Corporation, itself. Thus under date of June 16, 1914, the Oil Corporation writes to the Petitioner as follows. *Record*, p. 68:

"We are just advised by our Tiverton plant that their supply of coal has been pretty well exhausted in starting the boats out and that they can use another cargo of about 700 tons whenever it suits your convenience to ship it to them. You may therefore consider this as an order for such a cargo when it is convenient for you to make the delivery".

Certain of the coal was used by vessels which the Petitioner was unable to serve with process and a relatively small amount was used in the Oil Corporation's boilers at Promised Land and Tiverton and as to that coal, it is conceded that the Petitioner either lost or failed to perfect its maritime lien; but the balance of the coal was duly dis-

tributed among and actually used by libelled vessels as follows. *Record*, pp. 106-111, 89-104:

Name of Vessel	Tons	Contract Price
Walter Adams.....	121.25	\$408.16
Alaska	417.25	1,421.81
Arizona	35.00	114.80
George Curtiss	229.50	769.92
Montauk	177.50	608.76
Quickstep	19.00	62.32
Ranger	337.50	1,146.72
Herbert M. Edwards.....	429.00	1,390.72
Roland E. Mason.....	452.00	1,554.47
William B. Murray.....	406.75	1,389.95
Martin J. Marran.....	292.75	979.84
Amagansett	492.00	1,613.75
<hr/>		<hr/>
Total	3,509.50	\$11,461.22

The District Court sustained the libels against the above mentioned vessels and awarded decrees for the value of the coal delivered to and used by each of them, the several decrees with interest and costs amounting as of November 1st, 1917, to \$14,134.43.

There is no challenge of this evidence.

No question is raised as to the amount of coal delivered to each of the above named vessels, or as to the contract price therefor, or the sum due in respect thereof, except that a question is raised as to the application of \$2,000 received by the Oil Corporation which the Claimant contends should be applied in reduction of the above indebtedness and which the Petitioner contends was rightfully applied in satisfaction of other indebtedness.

The facts in connection with this \$2,000 payment will be hereinafter fully discussed.

(c) *Explanation of proceedings in the District Court.*

The invoices of the Petitioner for the coal sold and delivered as aforesaid were not paid when they fell due, whereupon Mr. Brophy, representing the Petitioner, came to New York for the purpose of enforcing collection by proceedings against the Oil Corporation's vessels. *Record*, pp. 23, 24.

He called to see Mr. Meadows, Vice-President of the Oil Corporation who persuaded him to delay action and the matter was held in abeyance until it became apparent that the Oil Corporation would pass into receivership. *Record*, p. 18.

Mr. Brophy then again conferred with Mr. Meadows "who prevailed upon him to exclude from his action he was threatening to bring as many of the boats as he was willing to exclude so that we (the Oil Corporation) might have something to operate with even though he tied up part of the fleet". *Record*, pp. 18, 19, 23, 24.

Both Mr. Meadows and Mr. Brophy were obviously of the opinion that the Petitioner, under the agreement in pursuance of which it had furnished the coal, had a joint and several lien against all vessels of the fleet and at Mr. Meadows' solicitation Mr. Brophy without waiving or intending to waive any lien or claim against the other vessels "selected the 5 best boats as ample security for his claim" and the amount due for the 5 cargoes of coal was apportioned on the records of the Oil Corporation among the 5 selected vessels arbitrarily and without regard to the amount of coal actually furnished to each vessel. Mr. Meadows testified on this point as follows. *Record*, pp. 19, 20:

"Q. 46. What was done in regard to making a record of the selection of these five boats as the boats against which the liens were to be impressed?

Ans. There was letters exchanged in which we specifically recognize our obligation and our agreement with these gentlemen that prior liens did exist, and those were selected as five boats that the liens should be enforced against if he saw fit to bring action, and in that letter there was some approximate statement as to the total amount of other liens that existed against these five boats.

Mr. Woolsey: Have you got the letter of September 11, our original letter, to the Atlantic Phosphate & Oil Company?

Mr. Thornley: Yes, sir.

Mr. Woolsey: May I have that? I will give you a copy in return. And there are also one or two other letters, Mr. Thornley—the letter of June 26th, the letter of July 15th.

Q. 47. Had you seen Mr. Brophy at New York prior to his writing you the letter in September, that you speak of?

Ans. Yes; I think he had been there.

Q. 48. Well, had there been any record made on your books as to the boats to be chargeable for these liens, the boats against which the liens were to be impressed?

Ans. There had been no singling out of vessels, nothing except the entire fleet had been referred to prior to his visit.

Q. 49. Then, what was done in regard to making a record as to these five boats against which the proceedings were to be enforced?

Ans. Well, following his conference it was agreed that he should have his invoices billed, one invoice against one of the five new boats which we recognized as the best boats.

Q. 50. Will you tell the Judge what happened, how this was done?

Ans. Mr. Bohannon came to the office with the invoices made out as Mr. Brophy and I had agreed they should be made out.

Q. 51. In the same proportion as contained in these libels?

Ans. Yes, just as they are in the libels. When we came to substitute them for the existing invoices which had already been rendered we found on the existing invoices the bookkeeper's notations, the stamps with the "O. K." with the different initials on them, and we realized that an effort would have to be made to reproduce those, but instead of doing that the bill heads were simply torn out and pasted to the original invoices.

Q. 52. Do you remember the date of this?

Ans. I think it was either the early part of September or the end of August".

In October, 1914, receivers were appointed for the Oil Corporation, and some months later the Petitioner filed intervening libels against five of the Oil Corporation's vessels, each of the libels containing two counts:

(1) a count for the value of coal allocated to the vessel on the books of the Oil Corporation, and

(2) a count for the value of the coal actually furnished to and used by the libelled vessel.

During the progress of the trial the District Court expressed a doubt as to the possibility of holding any one of the five vessels liable for coal not actually used by it, and thereupon the Petitioner libelled seven other vessels

of the fleet which were the only vessels then within reach of process.

All the libels were thereupon consolidated and proof was taken establishing with mathematical certainty the amount of coal actually furnished to each one of the twelve libelled vessels. *Record*, pp. 93, 95.

(d) *Decision of the Lower Courts.*

On proof of the amount of coal furnished to and used by each of the libelled vessels the District Court found no difficulty in sustaining each libel to the extent of the value of the coal so furnished. We quote the following from Judge Brown's opinion. *Record*, p. 77, 240 Fed., p. 152:

"I find, therefore, that in contracting for this coal it was understood by both parties that it was to be principally used for strictly maritime purposes, that a large part of it was used for such purposes, and that the parties contracted in view of statutory rights to a lien.

"It may be argued that when coal is delivered to bins on the wharf of a purchaser, who may use it as he pleases, on such of his ships as he may select, or upon land, if he prefers, that the coal is furnished to the owner and not to a vessel. But such an argument upon the evidence in this case ignores the material fact that it was understood by both parties that the coal was procured and supplied largely for uses which were strictly maritime.

"Doubtless a very substantial part of the inducement to the Coal Company to supply the coal was its knowledge of its intended use by vessels for maritime purposes, and its understanding that the

law gave it a lien for coal supplied for such purposes. Upon the facts in this case it is most improbable that the coal would have been supplied to the owner and upon the owner's very doubtful credit.

"I find that it was furnished because it was destined and intended to be used in large part by vessels, and that in the sense of the statute it was therefor furnished to vessels upon the faith of a lien thereon, and not to the owner.

"The ultimate destination to vessels, and the use by vessels, being a material consideration, contemplated by both parties, it would be most unjust to the libellant to hold that it furnished the coal to the owner, and only on the owner's credit. The mere fact that the names of the particular vessels to receive particular shipments of coal were unknown I cannot regard as material. The Oil Corporation was known to be the owner of a fleet of vessels, and it was known that those vessels would call from time to time at the Oil Corporation's wharves for their coal. That is sufficiently certain which, in the due course of the contemplated supply of coal to the fleet would be made certain.

"The subsequent appropriation of the coal to particular vessels by the owner, being in pursuance of what was intended by both parties, logically relates to the question whether the coal was furnished by the libellant to a vessel. The course of the business of the owner's fishing fleet selected and made certain which of the vessels should receive the benefit of the libellant's coal and become subject to a maritime lien corresponding to the benefit received. A contract to provide coal for such vessel of a fleet as might first arrive in port, and the delivery of coal ready at the owner's wharf

for such vessel would become definite on the arrival of the first vessel of the fleet.

"As supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet, as supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels, as at the time supplies are ordered there may be uncertainty as to which vessel may require them and use them, the statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of the vessel which is to require the supplies.

"The appropriation of the coal to a particular vessel, though made by the owner, yet if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a "furnishing" by the libellant to "a vessel", which is identified by the act of the owner in placing the coal aboard.

"Cases which hold that supplies may be furnished to a vessel, though not actually incorporated in or used by the vessel, have no bearing in this case. While use and appropriation may not, in all cases, be necessary to make out a case of furnishing to a vessel, it does not follow that they may not afford conclusive evidence of the identity of a vessel and of the completion of a maritime lien thereon.

"But the question of the effect of an appropriation to a particular vessel I regard as settled by the decisions of Mr. Justice Curtis and Judge Put-

nam, heretofore cited. In these cases it was at the outset uncertain which of two vessels might receive the supplies. In the present case it was uncertain which vessels of a fleet might receive them, but in this case, as in the cases cited, the uncertainty ended upon the owner's appropriation of the coal to special vessels.

"Following the decisions of Justice Curtis in *The Kiersage*, 2 Curt. 421, Fed. Cas. No. 7,762, and of Judge Putnam in *Berwind-White Coal Mining Co. v. Metropolitan S. S. Co.* (C. C.) 166 Fed. 784, I am of the opinion that for such coal as actually went into any vessels of the fleet the libelant is entitled to a maritime lien upon such vessel, but that there can be no lien upon one vessel for coal supplied to another vessel. See, also, *The Yankee*, 233 Fed. 919, 927, 147 C. C. A. 593."

The Circuit Court of Appeals reversed the decrees of the District Court because it felt compelled, apparently, on historical grounds, which it deemed of importance, to restrict the application of the Lien Act of June 23, 1910, to cases where the name of the vessel to which supplies are to be furnished and the extent of the supplies are known and specified in advance.

We quote the following from the opinion written by Judge Dodge, *Record*, p. 243:

"Assuming that the libelant can be said, in the case of any one of the vessels, to have 'furnished to' her the coal she received, in the statutory sense, the furnishing may be said to have been 'upon the order of her owner'. But the question is, whether any such assumption can be made, in view of the facts that after turning over to the

owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select, out of the fleet, the particular vessels by which the coal was to be received and used; and to determine the particular part of said quantity to be put on board each vessel, as well as the particular time for putting it on board.

"The Federal statute enlarged the maritime law as it has previously stood, by permitting the acquirement of maritime liens upon vessels, for supplies furnished to them, as well in their home ports as in foreign ports. This it accomplished by providing that proof of furnishing such supplies to a vessel should be sufficient proof of credit given to the vessel therefor,—definite proof of credit so given having always previously been held necessary, whenever what had been furnished had been furnished at the port of the owner's residence. We see no reason to believe that the statute intends the same result to be accomplished without proof that the supplies for which a lien is claimed have been furnished directly to the vessel, and not merely furnished to the owner without definite and distinct reference to her."

These two quotations indicate the point where the views of Judge Brown and Judge Dodge diverge.

They also indicate the underlying question now presented to this Court:

Is the Petitioner to be deprived of its lien and its decrees undermined for the benefit of the purchaser of the vessels at foreclosure sale, who acquired the vessels with full knowledge of the facts, merely for the reason that the Petitioner did not do the impossible and indicate in advance of the delivery of the coal at the Oil Corpora-

tion's bins the name of each vessel to be supplied with coal and the amount to be appropriated to her?

It is urged by the Petitioner that such a construction is out of line with previous well considered judicial decisions and so limits the Act of Congress that it is wholly unavailable as a source of credit to corporate and other ship owners operating fleets of vessels.

FIRST POINT.

THE ACT OF JUNE 23, 1910 AFFORDS A MARITIME LIEN FOR SUPPLIES FURNISHED TO A VESSEL AND WHERE COAL IS DELIVERED TO THE OWNER OF A FLEET OF VESSELS FOR DISTRIBUTION AMONG THE VESSELS OF THE FLEET UPON AN EXPRESS STIPULATION THAT THE DELIVERY IS MADE UPON THE CREDIT OF THE VESSELS AND NOT UPON THE CREDIT OF THE OWNER A LIEN ATTACHES TO EACH VESSEL FOR THE COAL ACTUALLY DISTRIBUTED TO AND USED BY IT.

The Act of Congress of June 23, 1910 (36 Stat. 604, chapter 373) printed in full in a foot-note on page 2, provides that,

(§ 1) "Any person furnishing * * * supplies * * * to a vessel, whether foreign or domestic upon the order of the owner or owners of such vessel * * * shall have a maritime lien on the vessel which may be enforced by a proceeding *in rem* and it shall not be necessary to prove that credit was given to the vessel".

In the case at bar the Oil Corporation, the bankrupt owner of a fleet of 19 steam fishing vessels ordered from the Petitioner for the purpose of keeping its fleet in operation five cargoes of coal, valued at \$17,854.27.

By the express terms of the Act of Congress there is a presumption that the coal so furnished to the vessels was furnished upon the credit of the vessels and not upon the credit of the owner. But the Petitioner does not rest its case upon any mere statutory presumption. It refused to deliver any coal on the credit of the owner; it declined to accept the Oil Corporation's proposal that it accept a note secured by mortgage bonds as collateral, and finally consented to deliver the coal solely upon the credit of the 17 vessels of the fleet then in service and under an express agreement made by the Vice-President and Manager of the Oil Corporation, whose authority has not been questioned, that it should have a maritime lien on these vessels therefor.

The Circuit Court of Appeals has held, however, that notwithstanding the statutory presumption and the express agreement of the parties, no maritime lien attached under the Lien Act for the reason—and we again quote directly from the opinion of Judge Dodge—that,

“After turning over to the owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select out of the fleet the particular vessels by which the coal was to be received and used; and to determine the particular part of said quantity to be put on board each vessel as well as the particular time for putting it on board.”

Reduced to a simple analysis the decision of the Circuit Court of Appeals holds that a supply man who furnishes his supplies to a vessel *through the agency of the owner of the vessel* cannot under any circumstances have a maritime lien on the vessel for the supplies.

A stronger case of right to a lien than that shown here cannot well be imagined.

The Petitioner asked for a review of the decision of the Circuit Court of Appeals on the ground among others, that it is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *The Yankee*, 233 Fed. 919.

In *The Yankee*, the dredge *Yankee*, chartered to a dredging company, was being used by it in dredging in the Delaware River below Philadelphia. The libelants furnished supplies on orders of the dredging company containing shipping directions pursuant to which the supplies were forwarded by rail and other carriers to a designated wharf in Philadelphia, from which they were taken from time to time by the dredging company to the dredge where it was at work. Whether *The Yankee* was specifically mentioned by name in the orders does not appear. Certain of the supplies went to and were, however, used by *The Yankee*.

It was held that such supplies were "furnished * * * to a vessel", within the meaning of the Act of June 23, 1910, c. 373, § 1, 36 Stat. 604 (Comp. St. 1913), relating to maritime liens, and that under that Act one furnishing supplies for a vessel on proof of

1. an order therefor from the owner or from a person

to whom the management of the vessel has been lawfully entrusted at the port of supply and

2. of the fact that the supplies reached the vessel, has the right to a maritime lien on her.

Circuit Judge Woolley, delivering the opinion of the court, said at page 927:

"With respect to the claim of the last named libellant, which grew out of a contract to supply coal for the whole fleet, we are satisfied that in giving the order, the quantity to be supplied to and daily consumed by the *Yankee*, was mentioned and considered by the parties, and that of the total amount of coal supplied, a definite portion was appropriated for and furnished to the *Yankee* within the rule of law applicable in such cases. *The Kiersage*, Fed. Cas. No. 7762; *The Murphy Tugs* (D. C.), 28 Fed. 429; *McRae v. Bowers Dredging Co.* (C. C.), 86 Fed. 344".

While the Circuit Court of Appeals in the opinion in the present case written by Judge Dodge, does not directly question the decision in the case of *The Yankee*, it is evident that Judge Dodge regarded the case as having been erroneously decided and was unwilling to be guided by the principles underlying it.

He refers to the opinion in *The Yankee* as going further than that of any other Court in interpreting the provisions of the Act of Congress, but makes no effort to distinguish the case of *The Yankee* from the instant case, other than to note that in the case of *The Yankee* where, as in the present case, coal was contracted for by the operating owner for the use of a fleet of vessels *The Yankee* was specifically named as one of the vessels of the fleet, and it was understood that a specified amount of the coal

so contracted for in the name of the owner was for the use of *The Yankee*.

We doubt the correctness of Judge Dodge's interpretation of the opinion in the case of *The Yankee*.

It does not appear from the opinion that *The Yankee* was in fact specifically mentioned by name in the negotiation of the contract, or that she was identified otherwise than as one of the units of the fleet for which the coal was purchased. Neither does it appear as we read the case that the exact amount of coal intended for the use of *The Yankee* was definitely fixed and specified, all that the opinion discloses on this point is that "*the quantity to be supplied and daily consumed was mentioned and considered by the parties*".

Clearly the libellant in *The Yankee* had done precisely what the Petitioner did in the present case. He sold a large quantity of coal to the owner of the fleet for the indiscriminate use of the vessels of the fleet and delivered the coal to the owner on the credit of the maritime lien on the vessels afforded by the Act of Congress, and left it to the agency of the owner of the fleet to make delivery of the coal to *The Yankee* and other vessels of the fleet, and to make the apportionment among them from time to time on the basis of their respective requirements and not on the basis of any specific allotment agreed upon at the time the coal was delivered to the owner.

We contend that upon the actual facts the cases are parallel.

Even assuming, however, that Judge Dodge correctly states the facts disclosed in the case of *The Yankee*, it is still evident that in principle the two cases cannot be distinguished.

There is no substantial reason why the name of the vessel should be specified; it ought to be sufficient if the vessel is identified with reasonable certainty as Judge Brown suggested in the District Court, and we submit that it is so identified when it is mentioned as one of the units of the fleet. Neither can we perceive any substantial reason why the "exact quantity" of coal to be furnished to any one of the vessels of the fleet should be indicated prior to the delivery of the supply to the owner; on the contrary, there are important practical reasons why the apportionment should be left to the agency and discretion of the owner. We quote in this connection from the opinion of Judge Brown. *Record*, p. 77:

"As, supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet; as, supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels; as, at the time supplies are ordered there may be uncertainty as to which vessel may require and use them, the Statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of the fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of a vessel which is to require the supplies".

"The appropriation of the coal to a particular vessel though made by the owner, yet, if done in pursuance of the course of business contemplated by the parties, must be recorded as completing 'a furnishing' by the libellant to 'a vessel' which is identified by the act of the owner in placing the coal aboard."

That the movement of vessels is necessarily uncertain is not the only fact to be considered.

Ship owners purchasing supplies for fleets of ocean going vessels or for the cargo carriers of the Great Lakes or even for smaller fleets of trawlers and fishing vessels, can no longer depend on the stocks on hand in the ship chandleries along the water front, as was the practice at the time of the early decisions referred to by Judge Dodge. This is especially true of coal supplies.

Practically all supplies are now purchased in large quantities directly from the manufacturer or producer; and coal, the vital factor in the supply service of every great shipping concern, is often purchased directly from the mine owners.

Coal and fuel oil which originate at interior points are brought to tidewater and lake ports through the agency of rail carriers and the deliveries to the consignee are dependent on car supply, coal production, weather conditions, and a variety of other circumstances, and consequently are uncertain.

Accordingly, the ship owner, unless his vessels are to be detained in port to await the uncertain arrival of supplies and unless railway equipment is to be detained on sidings to await the uncertain arrival of vessels, is often obliged to maintain extensive storage plants at the bases where the vessels take on supplies.

Purchases are made months in advance of the approximate dates for the delivery of the supplies by the rail carriers and cannot, in the nature of things, be made in the name of a particular vessel or for the requirements of a particular vessel and frequently cannot ultimately be delivered to a particular vessel, otherwise than through

the agency of the ship owner, without disruption and disorganization of the ship owner's arrangements.

It is, of course, manifestly to the interest of the public, especially under prevailing economic conditions, that all storage plants and facilities be utilized and that large purchases of supplies be made at such times and in such manner as will permit intensive employment of railway equipment by rail carriers engaged in transporting the nation's commerce. It would be intolerable either to detain a vessel in port to await the arrival of coal, or to detain railway equipment upon a siding to await the arrival of a vessel. Yet, these results are inevitable if parties contracting to buy and sell supplies are required by reason of a narrow construction of the Lien Act, either to surrender the benefit of the Lien Act or to revert to the business conditions of an earlier century.

The case of the Petitioner is one of unusual hardship.

The Petitioner parted with its coal solely upon the security of the lien given by the Act of Congress.

The Petitioner's coal was actually delivered to and used by the libelled vessels to the amount for which the lien was allowed against each of them.

By the use of the Petitioner's coal the vessels were kept in operation, contributing earnings to the Oil Corporation and its creditors, including the Seaboard Fisheries Company, the claimant herein, which under foreclosure proceedings, purchased the libelled vessels with knowledge that the Petitioner asserted a maritime lien against them for coal unpaid for although actually delivered to, and used by, the vessels.

A maritime lien under such conditions is sustained

by the weight of authority both prior to and subsequent to the passage of the Act of June 23, 1910.

In *Bericind-White Coal Mining Co. v. Metropolitan SS. Co.*, 1908, 166 Fed. 782, affirmed by this Court, 173 Fed. 471, an intervening petition was filed seeking to have liquidated and allowed certain claims for work and material furnished on two steamers as a part of their original construction, and Judge Putnam held that where a joint contract provided that payments should be made to the contractor for labor and materials furnished for the construction of several vessels under the statutes of New Jersey, there was no inherent difficulty in determining the amount to be paid for labor and materials which went into each vessel, nor in apportioning the lien accordingly on each vessel.

Judge Putnam further held that it was not essential to the validity of a lien given by a state statute on a vessel for labor or material furnished in its construction to prove that the labor or material was furnished on the credit of the vessel, where the statute does not in terms require such proof.

He said at page 784 (*Italics ours*) :

"The underlying equity is that the lien is supported by the fact that the labor and materials have actually gone into the property on which the lien is claimed, and increased its value."

In *The Kiersage*, 1855, 2 Curtis, 421, 14 Fed. Cas. 466, it was held that a law of Maine similar in purport to the Lien Act did not give to material men a lien on one vessel for supplies and materials furnished both for it and for another vessel though both were of the same size and

model, but that the lien attached for such supplies as were actually used in the vessel against which proceedings were pending.

Mr. Justice Curtis, who delivered the opinion of the Circuit Court, used the following language, at page 467 (Italics ours) :

“At the same time, I think that where materials are furnished for two specific vessels, though the original contract does not appropriate them specifically to either, yet when they are afterwards appropriated, they may properly be considered as furnished for that vessel, in the construction of which they are used. *The effect of such a contract is to enable the builder to elect, to which of the two vessels he will appropriate them.* When he has made that election and actually appropriated them or some part of them to one vessel, I can see no sound reason, why it may not be said with truth, that they were furnished for and on account of that vessel, and so, that the case is within the terms of the law.”

As Judge Brown remarked in his opinion below, this language “seems to be directly applicable to the case before us”. *Record*, p. 76.

In *The Cora P. White*, 1917, 243 Fed. 246, which was a libel against a fishing vessel, one of the libelants claimed a maritime lien for coal furnished to the vessel. While the District Court decided that no maritime lien existed for the coal furnished, the sole reason for that decision was that the coal was furnished to the owner company without mention that the coal was intended for use on a

vessel. District Judge Rellstab said at page 249 (*italics ours*) :

"The Act of June 23, 1910, extended said lien to domestic vessels, and made it unnecessary to allege or prove that credit for the supplies, etc., was given to it, but it did not obviate the necessity to allege and prove that said supplies were in fact furnished to the vessel. *This does not mean that the materialman must personally see that the goods are actually put on the vessel.* If the supplies are furnished on the orders of the person to whom its management has been lawfully intrusted at the port of supply, and which pursuant to the orders of such person were forwarded in the manner indicated to a designated place, from which they were taken by such person to the vessel where it was at work, such supplies are furnished to it within the meaning of the act of 1910. *The Yankee* (C. C. A. 3), 233 Fed. 919, 147 C. C. A. 593.

Nor did this act change the law that a lien does not exist when the supplies are furnished on the mere credit of the owner. *Ely v. Murray & Tre-gurtha Co.* (C. C. A. 1), 200 Fed. 369, 118 C. C. A. 520. The agreement or understanding as to whether credit was given to the vessel, or the owner alone, may be inferred from acts and circumstances as well as from express language. *Cuddy v. Clement* (C. C. A. 1), 115 Fed. 301, 53 C. C. A. 94; *The Lucille* (D. C.), 208 Fed. 424.

"No case has been cited, and none has been found, where a maritime lien has been allowed, where the supplies were furnished on the order of the owner, which did not indicate that they were for a vessel's use, because the goods or some of them were subsequently used on said vessel. There are cases which sustain such a lien where the

goods or services were ordered for several vessels, and all of the goods or labor were actually furnished or rendered to said vessels. *The Kiersage*, Fed. Cas. No. 7762; *The Murphy Tugs* (D. C.), 28 Fed. 429; *McRae v. Bowers Dredging Co.* (C. C.), 86 Fed. 344; *The Yankee* (Claim of the Glen Brook Coal Co.), *supra*. In these cases the value of the supplies and services was proportioned and liens allowed on said vessels respectively".

The principles applied by Judge Arthur Brown in the present case were also applied in the often cited cases of *The Murphy Tugs*, 28 Fed. 429, and *McRae v. Bowers Dredging Co.*, 186 Fed. 344.

In *The Murphy Tugs*, 1886, 28 Fed. 429, the libelant made a contract with the president of a tug boat company to serve as a diver and engineer and was to be paid at the rate of \$10 a day and to work on any vessels of the company as ordered. In dealing with this and sustaining the liens, Mr. Justice Brown, then District Judge in Michigan, said at page 430 (*italics ours*):

"The difficulty in this case arises from the fact that the contract between the libelant and the Tug and Transit Company was not for services upon any particular tug, but for services upon any tug owned by the company to which he might be ordered. I doubt if this circumstance varies in any way the principle applicable to this class of cases if his services are paid by the day, and *are therefore capable of apportionment*. While the services may not be actually rendered upon the tug, he is for the time being a part of the equipment of such tug, and entitled to a lien upon her, upon the principle announced by this court in the case of *The Minna*, 11

Fed. 759, in which I had occasion to hold that all hands employed upon a vessel, except the master, were entitled to a lien, if their services were in furtherance of the main object of the enterprise in which she was engaged. In this case a lien was sustained in favor of persons employed upon a fishing tug, solely for the purpose of catching and preserving fish, notwithstanding the fact that they took no part in the navigation of the vessel, and that an incidental portion of their duties was performed on shore".

"To deny the libellant a remedy by lien is virtually turning him over to a personal claim against an insolvent corporation. While the case is a somewhat doubtful one, I am inclined to allow the claim."

McRae v. Bowers Dredging Co., 1898, 86 Fed. 344, which cited *The Murphy Tugs*, at page 347, was an equity case in which the defendant was an insolvent corporation whose property was in the hands of a receiver.

The intervening creditor in question had furnished necessary supplies and materials for repairs to defendant's vessels and machinery.

Among the supplies furnished was coal consumed by two vessels, which was furnished upon the request of the general manager. This coal was necessary to enable the defendant's dredges to work.

The evidence showed that the general manager did not have money to pay for or means to procure this coal otherwise than upon the credit of the dredges. The Court held that this evidence was sufficient together with evidence that it was furnished at the manager's request in scows, from which it was received on board the dredges as re-

quired for use, to raise a conclusive presumption of necessity for using the credit of the vessels and to result in the creation of maritime liens. *The Grapeshot*, 9 Wall. 129-145; and *The Lulu*, 10 Wall. 192, 204, were cited.

The Court further held that where persons were employed on and coal furnished to two or more vessels and the evidence shows the time which each man devoted to the service of each vessel and the amount of coal used on each, the amounts will be fairly apportioned between the vessels and as a court of equity it enforced preferential claims based entirely on maritime liens against the estate.

The Court said at page 348 (*italics ours*) :

"All of the coal consumed by both vessels while engaged in the work was purchased of the intervenor C. J. Smith, as receiver of the Oregon Improvement Company. The evidence shows that the defendant is a corporation organized under the laws of the State of Illinois. Its president and general officers, except a general manager, were not inhabitants of this state, and it had no general office in this state while the work referred to was being done. The coal was furnished upon the request of the general manager, and was delivered in scows, from which it was received on board the dredges as required for use. *The evidence shows the average daily consumption of each of the dredges, and the number of hours each was in operation, and from this data a close estimate of the amount supplied to each can be ascertained, and a fair apportionment made, so that the liens upon each vessel will not be for a greater amount than the price of the coal which she consumed.*"

While it is true that certain of the above decisions were rendered under state statutes we fail to perceive, in view of the wording of the Lien Act, any substantial basis for distinguishing them or questioning their authority.

Especial reliance is placed upon the decision in *The Kiersage*, 2 Curtis 421.

The Maine statute involved in that case allowed a lien for supplies "*furnished to or for account of a vessel.*"

A quantity of supplies were delivered to the owner of two vessels who was permitted by the supply man to apportion them among the two vessels—in the language of Judge Dodge, it was left to the owner "to determine the particular part of said quantity to be put on each vessel as well as the particular time for putting it on board". *Record*, p. 243.

Judge Curtis upheld the lien on the express ground that the several quantities apportioned to each vessel by the owner were "furnished to" the vessel by the supply man. This is precisely the language used in the Act of Congress of June 23, 1910, which is under consideration here.

SECOND POINT.

THE LIEN ACT WAS INTENDED TO BROADEN AND INCREASE THE SECURITY OF PERSONS FURNISHING SUPPLIES TO VESSELS, NOT TO NARROW OR CIRCUMSCRIBE IT, AND HENCE SHOULD HAVE AN ENLIGHTENED CONSTRUCTION TO MEET MODERN NEEDS.

In *The Occana*, 1917, 244 Fed. 80, which was a consolidated libel to enforce maritime liens against the

Oceana, the main question was that of notice. It was held that all persons furnishing supplies, whether before or after formal delivery of a vessel from the ship repairer to her owner, without knowledge or notice of the contract of sale, were entitled to liens therefor. Judge Ward, who delivered the opinion of the Court of Appeals for the Second Circuit, discussed the nature and purpose of the Lien Act, and showed that its purpose was to increase not to limit the material man's security by way of lien. He said at page 82:

"Obviously the act was passed in restriction of the rights of vessel owners and in the aid of those who furnish repairs, supplies, and other necessities. It wiped out all difference between foreign and domestic vessels, and between repairs, supplies, and other necessities furnished in the home port, as distinguished from those furnished in foreign ports, and between such as were ordered by the master and such as were ordered by the owners. It created a presumption of law of the vessel's liability for all repairs, supplies, and other necessities ordered by the master, managing owner, ship's husband, charterer, any person to whom the management of the vessel is intrusted at the port of supply, owner *pro hac vice*, and conditional vendee."

THIRD POINT.

IT IS NOT NECESSARY IN ORDER TO IMPRESS A MARITIME LIEN ON A VESSEL THAT THE SUPPLIES BE ACTUALLY DELIVERED ON BOARD THE VESSEL BY THE PERSON WHO SUPPLIES THEM.

If supplies are brought within the immediate presence or control of a ship, the vessel, of course, is bound. *Ammon v. The Vigilancia*, 1893, 58 Fed. 698.

In *D. & H. Canal Co. v. The Alida*, 1857, 23 Betts D. C. Mss. 139, 7 Fed. Cas. 399, which was a libel for fuel furnished, Judge Betts, in giving a decree for the libellant, held that a lien on a steamer for fuel arises upon a delivery thereof on a wharf nearby in pursuance of the orders of her officers.

In *The James H. Prentice*, 1888, 36 Fed. 777, Sanborn, sole owner of a barge, contracted with one Beaudry to repair and improve her. While the work was going on he agreed to sell a half interest in her to Kelly, and further authorized Kelly to superintend the work and to settle the bills therefor. He subsequently conveyed to Kelly his half interest. Libelants, knowing nothing of the contract with Sanborn and Kelly, and supposing Kelly to be a part owner, furnished lumber to the contractor Beaudry, which Kelly inspected and promised to pay for. It was held that Sanborn had so conducted himself as to lead libelants to believe that Kelly was authorized to bind the vessel, and that they had a lien for the amount of their bill.

It was further held that under a statute giving a lien

for material furnished in and about the building and repairing of water craft, it is sufficient to show that the materials were ordered for and delivered to or near the vessel though it appeared that a part of them were subsequently used for other vessels, and that the act did not require proof that the materials were actually incorporated in the vessel sought to be charged.

FOURTH POINT.

IT IS SETTLED LAW THAT AN OWNER MAY BY AGREEMENT, EXPRESS OR IMPLIED, CREATE A MARITIME LIEN ON HIS VESSEL FOR SUPPLIES FURNISHED.

In *The Kalorama*, 1869, 10 Wall. 208, which was a libel for advances ordered by the owner for repairs and supplies to the steamer, the District Court held that the advances were a lien upon the steamer. The Circuit Court held that the advances constituted the mere personal debt of the owner. The Supreme Court reversed this decision and affirmed the decree of the District Court.

Mr. Justice Clifford said at page 214:

"Implied liens it is said can be created only by the master, but if it is meant by that proposition that the owner or owners, if more than one, cannot order repairs and supplies on the credit of the vessel, the Court cannot assent to the proposition as the practice is constantly otherwise."

In *The Cimbria*, 1914, 214 Fed. 128, it was held that under Act June 23, 1910, one advancing money to pay claims for repairs, supplies, etc., furnished to a vessel, is

presumed to have made the advances on the credit of the vessel, and such presumption is not overcome by his taking the owner's note and a mortgage on the vessel.

In *The Alaskan*, 1915, 227 Fed. 594 (C. C. A. 9th Circuit), it was held that, under the Washington State Code § 1182, which gives a lien on a vessel for repairs made at the request of the owner, agent, etc., although there must be some evidence that the repairs were furnished on the credit of the vessel, such evidence need only be slight. It was held that the uncontradicted evidence of the repairer that he relied on the credit of the vessel, and that he had previously made repairs for the same owner, charged the same to the vessel direct, and rendered the bills so charged to the owner, is sufficient.

In *The George Dumois*, 1895, 68 Fed. 926 (C. C. A. 5th Circuit), coal was furnished by libellant at Mobile, Ala., to the ship *G.* upon the personal order of one D., the president of the C. Company, the charterer of the ship. The C. Company was a Louisiana corporation and D. a resident of New Orleans. Apparently neither had any property at Mobile. The ship was not in a port of distress, but was running regularly between Mobile and foreign ports. No reference was made to the vessel as a source of credit when the coal was ordered, but it was received by the master and used in prosecuting a voyage which could not have been made without it, and it was charged on libellant's books to the ship. It was held that libellant had a lien on the ship for the price of the coal.

The Court in *The George Dumois* held that where

necessary supplies are furnished to a ship in a foreign port, and are received by the master and used in the service of the ship, a maritime lien results, unless it is shown that the furnisher of the supplies relied on the credit of the owner and not of the ship. It was held that the burden of showing such fact, to defeat the lien, rests on the ship and her claimants.

In *The Fortuna*, 1914, 213 Fed. 284, it was held that articles furnished on the order of the master and representative of the owner to supply the slop chest of a vessel about to sail on a season's fishing trip of four or five months' duration, are "supplies or other necessities" within the meaning of the Act of June 23, 1910, c. 373, § 1, 36 Stat. 604, for which such section gives a lien on the vessel.

The recent decision of the Circuit Court of Appeals for the Ninth Circuit in *The South Coast*, 247 Fed. 84, indicates the strength of the presumption that supplies are furnished on the vessel's credit.

In that case there was a charter of a ship with option to purchase and the owner reserved only the right to appoint the master who was to be paid by and be under the orders of the charterer. It was provided that the owner might withdraw the vessel on failure of the charterer to pay the charter hire or to discharge any liens within thirty days after they accrued, and that the charterer should hold the owner harmless from all liens or demands against the vessel created during the charter term.

It was held that the provision for this indemnity did not negative the authority of the charterer to procure

supplies on the credit of the vessel, but, on the contrary, rather implied such authority, and that any one who, in good faith, furnished the necessary supplies on the master's order on the credit of the vessel was entitled to a lien therefor, although the owner had notified him not to furnish the supplies.

In a very interesting opinion, Judge Wolverton points out that the owner's attempt to prevent the libelant from advancing supplies on the credit of the vessel was really an invasion of the charterer's rights under the charter and was unavailable to subvert the master's authority in the premises.

Judge Wolverton said at page 88 :

"Now, coming to the instant controversy: The repairs and supplies in question were furnished on the order of the master. The master, who was appointed by the owner, was obliged, under the charter party, to take his directions from the charterer. The libelant was apprised of the existence of the charter party, and was warned by the owner not to furnish supplies on the ship's credit. The libelant, nevertheless, furnished the supplies, with the declaration to the owner's representative that he would not furnish them in any other way, or under any other conditions, than upon the credit of the ship.

"It is the purpose of the statute, as it was the purpose of the law previous thereto, that the furnisher of such commodities as are necessary to enable a ship to enter upon or pursue her voyage, and to engage in maritime traffic, to which only she is adapted, shall have a lien on the ship therefor. It is in the interest of shipping, conducted upon maritime waters, that such should be the case,

as otherwise credit would not be extended, upon the account of the owner or master alone, to enable the ship to discharge its peculiar function, and great inconvenience would follow, to the detriment and disadvantage, if not the ultimate disaster, in large measure, of maritime shipping. Many ships sail under charter, either verbal or in form of regularly drawn charter parties, and it is usual and customary for the charterer in either event to disburse the necessary expenses of the ship; and of this all persons furnishing supplies, etc., to a chartered ship must be deemed to have notice. But notwithstanding this notice, or even knowledge that the ship is under charter, we cannot believe that it was the intendment of the statute or of the law that the furnisher should, because of that fact, be deprived of his lien when advancing necessary repairs or supplies in good faith to enable the ship to engage in her accustomed traffic. Nor do we believe that it was the intendment of the statute or of the law thus to impose so vital a hindrance upon maritime shipping, and unless there is something more in the charter party, that unalterably inhibits the master or the charterer from incurring any expenditures on the credit of the ship that may become a lien thereon, the master's ordinary authority is not impaired or abbreviated; nor can the right of the furnisher of repairs, etc., to extend credit to the ship, and his consequent lien, be so subverted.

"The terms of the present charter party as respects the furnishing of repairs, supplies, etc., are only those usual to most charter parties, and by reason of the provision that the charterer will hold the owner harmless from all liens against the vessel, there is an implication of authority on the

part of the charterer to incur such expenses on the credit of the vessel. True it is that the owner attempted to prevent the libellant from advancing the supplies on the credit of the vessel; but this was an invasion of the charterer's rights under the charter party, and was unavailing to subvert the master's authority in the premises. As bearing upon the proposition, in addition to *The Surprise*, *supra*, see *The Philadelphia*, 75 Fed. 684, 21 C. C. A. 501."

Even though there had been no express agreement furnish coal for specific ships the circumstances such that this Court should imply an agreement create a lien on the particular ships which usually used the coal for the coal used by each. *The Upshot*, 1869, 9 Wall. 129; *The Ella*, 1897, 84 Fed. 471, 10 Fed. 208; *The Worthington*, 1904, 133 Fed. 725; *The Kalorama*, 1879, 10 Wall. 208; *The Emily Souder*, 1873, 17 Wall. 666; *The Valencia*, 1896, 165 U. S. 264, 271; *The Patapsco*, 1871, 13 Wall. 329; *The Havana*, 54 Fed. 201; *The Newt*, 1901, 107 Fed. 744; 114 Fed. 713.

FIFTH POINT.

AGREEMENTS FOR A GENERAL LIEN SUCH AS WAS HEREIN SET FORTH HAVE FREQUENTLY HAD JUDICIAL APPROVAL AND THE FACT THAT THE SUPPLIES HAVE BEEN FIRST CHARGED TO THE OWNER ON THE SUPPLIER'S BOOKS HAS BEEN HELD TO CREATE A LIEN ON THE MATERIAL.

In *The Patapsco*, 1871, 13 Wall. 329, coal was ordered by the owners under a general contract for all their vessels. Part of the coal was delivered on board

the *Patapsco* at a foreign port. The facts showed that the owners of the vessel did not have good credit and that the Coal Company was aware of this fact, and that the Coal Company looked to the vessels as security.

The Court held that a maritime lien existed for the value of coal supplied, unless it was shown that the master had funds or the owners had credit. *It was also held that an entry in the ledger charging coal to owners was not sufficient to show that credit was given owners personally.*

Mr. Justice Davis delivered the opinion of the Court and said at page 333:

"It would be strange if the libelant did not know this condition of things and in the absence of proof on the subject, it is a reasonable inference that he did. If he had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished."

To the same effect is the case of *Lower Coast Transportation Company v. Gulf Refining Co.*, 211 Fed. 336, decided by the Circuit Court of Appeals of the Fifth Circuit.

In the present case it is admitted that the Petitioner had knowledge of the Oil Corporation's shaky financial condition. As Judge Brown said in his opinion in the case at bar, at page 75 of the record:

"It may be said, therefore, that the parties contracted knowing that a large portion of the coal was to be used for a strictly maritime purpose, and in reference to such legal rights as existed under the United States statute."

In *The Patapsco*, 13 Wall. 329, Mr. Justice Davis said at page 334:

"If the credit was to the vessel there is a lien, and the burden of displacing it on the claimant. He must show, affirmatively, that the credit was given to the company to the exclusion of a credit to the vessel. This he seeks to do by the form of charge in the libellant's journal and ledger. If it be conceded that these entries tend to support this position, they are far from being conclusive evidence on the subject. Entries in books are always explainable, and the truth of the transaction can be shown independent of them."

In certain phases that case is square with the facts in the case at bar. Here the bookkeeper merely charged the shipments as they were made into the general running account of the Oil Corporation even though both he and the officers of the Coal Company knew that the coal was furnished on the credit of the steamers for which the coal was intended. The change in the method of charging the coal was made at the Oil Corporation's request and in view of that fact is not subject to any just criticism by the successors in title to the Oil Corporation.

In *The Freights of the Kate*, 1894, 63 Fed. 707, a steamship line obtained certain letters of credit from its bank, and as collateral security for the payment of the drafts drawn thereon, hypothecated to the bankers "all freights earned and to be earned". The freights referred to were the freights of all the several vessels of the line. The Court held that hypothecation of the freights created a general lien on the freights for all the voyages of all the boats and that such a maritime lien

was properly created by agreement. The Court further held that freights of vessels B, C and D might be hypothecated to obtain supplies for vessel A. At page 712 Judge Addison Brown said :

"I see nothing invalid in such a general hypothecation. The parties, in effect, treated the vessels run by the company as constituting a line, and dealt with the line and all the vessels running in it, as with a single vessel. See *The Rosenthal*, 57 Fed. 254. This was the undoubted intention. In the negotiations, no particular steamers were named; the drafts were to disburse the company's steamers, *i. e.*, any or all of them, as might be needed. As between the parties there is surely nothing invalid in procuring necessary supplies for a line of vessels by an extended hypothecation of that kind. A master could not make such an extended hypothecation, because his authority extends only to his own vessel. But the owner is not thus limited. 'No one has ever questioned', says Butler, *J.*, in *The Mary Morgan*, 28 Fed. 199, 'that an express lien may exist whenever the owner chooses to create it. The freights belonged to the steamship company; and in thus hypothecating them, they exercised no more than an owner's ordinary right. The extended hypothecation was adapted to the modern modes of business, and was not violative of any rule of the maritime or municipal law.'

At page 713, Judge Addison Brown said :

"* * * maritime liens, resting wholly on express contract, have constantly been enforced. Such is the ordinary express contract of bottomry; the lien for supplies, under the English practice; the lien for charter hire upon the sub-

freights of a chartered vessel in possession of the charterer; the lien for supplies by material men, or for advances by the ship's agent, on dealings with the owner alone. *The James Guy*, 1 Ben. 112, Fed. Cas. No. 7,195; *Id.*, 5 Blatchf. 496, Fed. Cas. No. 7,196; *id.*, 9 Wall. 758; *The Kalorama*, 10 Wall. 214; *The Patapsco*, 13 Wall., 329; *The Stroma*, 3 C. C. A. 530, 53 Fed. 281, 283; *The Erastina*, 50 Fed. 126. See also *The Volunteer*, 1 Sumn. 551, Fed. Cas. No. 16,991; *The Kimball*, 3 Wall. 37, 44."

The Freights of the Kate, *supra*, stands specifically for the proposition that an hypothecation of freights earned and to be earned was a maritime contract and that it created a general lien on all freights of the steamship company, including those of vessels subsequently chartered, and that such a lien can be enforced in admiralty against the freights of vessels arriving after the failure of the company and further that this general lien was subordinate to any specific lien on the same freights for advances actually applied to assist the current voyage. In this case, as in the case at bar, there was a mortgage, but the Court said at page 714:

"The only other party in the case who might complain of the general hypothecation, is the mortgagee; and under both the maritime, and the municipal law, I think the mortgagee's rights are inferior to this express hypothecation."

Again, the Court said at page 715:

"The mortgagee and receiver contend that any such general lien as above stated is inferior to their claims. The ordinary rule, however, is that a mortgage of vessels is inferior in rank to sub-

sequent maritime or statutory liens for supplies; because the former is a nonmaritime security, while the latter are in aid of the necessities of commerce and navigation. *The J. E. Rumbell*, 148 U. S. 1, 13 Sup. Ct. 498."

In *The Advance*, 1896, 72 Fed. 793, affirming 63 Fed. 726, the owners of vessels borrowed money in the home port to discharge liens on vessels at foreign ports and enable them to continue their voyages. The owners expressly hypothecated the freights to cover the drafts. The Court held that this express hypothecation created a general maritime lien on the freights alone and did not create a lien on the vessel itself. Circuit Judge Shipman, who delivered the opinion of the Court, said at page 798:

"* * * At the threshold of the inquiry, three facts are manifest: Firstly, an absolute necessity, recognized by each, and consequent upon the known insolvency of the steamship company, of a maritime lien of some sort; secondly, that a maritime lien was given, which the district court has found to be, at least, upon the freights,—a conclusion which has now become *res adjudicata*, and in which our examination of the case leads to a full concurrence; thirdly, and one of great importance, that whatever security was given was expressly given. The contract between the parties was an express contract, entered into between the owner of the vessels and Mr. Huntington. The antecedent circumstances are valuable for the purpose of throwing light upon the probabilities of the contract, and in the ascertainment of what one party would have naturally proffered and the other party would naturally have insisted upon; but whereas, in many cases, courts, in consequence of the

silence of the parties when the advances were made, or their subsequent forgetfulness of what occurred, are compelled to look at the inferences to be drawn from their conduct and acts, in view of the known insolvency of the owner, little resort can be had in this case to that class of evidence. There is a class of cases, in regard to maritime liens for supplies furnished to a vessel in a foreign port at the request of the owners or of their agent (of which *The James Guy*, 1 Ben. 112, Fed. Cas. No. 7195, and 9 Wall. 758, and *The Patapsco*, 13 Wall. 329, are examples), in which there was not apparently an express contract between the owners and the material men for the credit of the vessel, but in which the lienors' knowledge of the insolvency of the owner was regarded as a very significant fact, from which the inference could naturally be drawn that credit must have been given in part to the vessel. In this case a court is able to ascertain what the owner offered, and what the lienors apparently accepted, as security, at the time when the contract was entered into. The terms of the express contract, when they can be accurately ascertained, must preclude the idea of a contract to be ascertained by inference for another and different security from the one contained in the express contract. It is true that Huntington's knowledge of the utter insolvency of the steamship company is important to show that he naturally would have wanted to get all the security which was available, but, if the evidence shows that he did content himself with the security of the freights, his lien must rest where he placed it."

Astor Trust Co. v. White, 4th Cir. C. C. A., 1917, 241 Fed. 57, is relied on by the respondent. The case seems

to recognize the correctness of Judge Brown's decision in the present case, in view of the proof that the coal was used by the steamers. It apparently arose out of another phase of the same receivership as was involved in this case.

Certain supplies were needed for a fleet of four fishing steamers. The charterers' credit was poor. The appellees agreed to furnish the supplies provided they were secured by a lien on the vessels. This was agreed to and notes aggregating \$2,000 were given, which were endorsed with the names of all the vessels and the names of two men. It was agreed further that for additional supplies furnished the appellees should have a lien on all the vessels, separately and as a whole. The aggregate value of supplies furnished was about \$2,200.

Other parties libelled the four steamers and the appellees filed two intervening libels, one against the Steamer *Laurence* for half of its claim, and one against the Steamer *Portland* for the other half. All four of the vessels were sold under decree, but only the *Laurence* brought enough to pay more than the admittedly prior claims of wages. The appellees filed an amended libel against the *Laurence* for the half of their claim for which they previously had libelled the *Portland*. Appeal was taken from the decree which sustained the amended libels and directed payment of the supplier's claims out of the fund resulting from the sale of the *Laurence*.

Judge Knapp, delivering the opinion of the Court, said at page 60 (*Italics ours*) :

"Nearly 100 years ago, Mr. Justice Johnson, speaking for the Supreme Court in *The St. Jago de Cuba*, 9 Wheat, 409, 416 (6 L. Ed. 122), said:

'The whole object of giving admiralty process and priority of payment to privileged creditors is to furnish wings and legs to the forfeited hull to get back, for the benefit of all concerned; that is, to complete her voyage.'

'And this figure of speech expresses the central idea of a maritime lien, namely, the equitable right, springing from the necessities of commerce, to hold the vessel itself for something done or furnished *to it* which enables it to continue in service, and without which its earning power would be greatly reduced, if not destroyed. It is the needful and saving benefit to the *res* which gives the right to proceed *in rem*. On no other basis can that right be supported. And this conception of the essential nature of a maritime lien pervades the whole range of statute law and judicial utterance upon the subject. For example, in 26 Cyc. 787, the principle is summed up as follows:

'The basis of a lien for necessities is a benefit rendered the vessel. Hence, in order for such a lien to arise, the necessities must be either delivered on board the vessel or brought into immediate relations with her, as by being delivered on the wharf or into the custody of some one authorized to receive them.'

'And this is but a paraphrase of the oft-quoted statement in *The Vigilancia* (D. C.), 58 Fed. 698:

'There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship.'

'But this principle, long accepted and familiar, seems clearly to refute the contention of appellees

that the owner of two or more vessels, used in a common service, may by verbal agreement subject them to a joint and several lien, 'singularly and as a whole', for supplies furnished indiscriminately to all of them, without attempting to segregate or identify the portion designed for any particular vessel, so that each of them will be bound for supplies furnished to the others, even if it receives none itself, and that such a lien will be good as against a prior mortgagee whose mortgage is duly recorded. We cannot assent to the proposition. It is plainly at variance, in our judgment, with the fundamental idea of a maritime lien; nor has it ever been recognized, so far as we are aware, in the general maritime law of the country, or in any legislative enactment."

* * * * *

"The appellees refer us to a number of cases, among them *The Kalorama*, 77 U. S. 204, 19 L. Ed. 941, and *The Valencia*, 165 U. S. 264, 17 Sup. Ct. 323, 41 L. Ed. 710, which hold that the owner may by contract express or implied, create a maritime lien for necessary supplies furnished to his vessel, even in the home port. This is undoubtedly the established rule of law, but it seems clearly without application. None of these cases touches, much less decides, the question here presented, namely, whether the owner can, even by express agreement, give a joint and several lien upon two or more vessels which will hold either of them, *not for supplies furnished to it, or intended for its use*, but for supplies furnished to the others, and which lien will be good as against a prior mortgagee. For that contention we find no authority. Indeed, in all the cases cited, it

appears either that the supplies were in fact furnished to the particular vessel sought to be charged, or that the decision was put distinctly on the ground of estoppel, as in *The Worthington*, 133 Fed. 725, 66 C. C. A. 555, 70 L. R. A. 353, where the dispute was solely between owner and libellant, and no rights of third parties were involved. Even in *The Wyoming* (D. C.), 36 Fed. 494, the Court said:

‘Furthermore, if money is advanced to aid in running two steamboats, no lien can be allowed against either *unless the proof shows how much was advanced on behalf of each, and for what purpose it was used*’.

“We therefore conclude that the appellees’ claim in this case cannot be sustained, and are the more content to so decide because of our disposition to restrict rather than enlarge the scope of secret liens.”

It will thus be seen that this case is directly in point and very favorable to the Petitioner’s contention in the case at bar. The liens were rightly allowed by the District Court, for here

“the proof shows how much was advanced on behalf of each, and for what purpose it was used.”

SIXTH POINT.

AS BETWEEN THE OWNER OF A VESSEL WHO AGREES TO GIVE A MARITIME LIEN FOR MONEY OR SUPPLIES AND THE PERSON FURNISHING THE MONEY OR SUPPLIES ON THE CREDIT OF THE VESSEL, THE OWNER IS ESTOPPED TO DENY THAT THE MONEY OR SUPPLIES WERE ACTUALLY USED FOR THE VESSEL.

In *The Worthington*, 133 Fed. 725, a bank advanced the sum of \$300 to the owner of a vessel upon the credit of the vessel in order to enable the owner to load his ship. On the trial it was sought to be shown that the money was not actually used to load the vessel or for any maritime purpose. The Court refused to receive such evidence, holding that the owner was estopped to deny that the money was used for the purpose represented and so defeat the lien.

In the case at bar, the Oil Corporation bought the coal for their fleet, and the necessity for the possession of that coal was pressing and vital. We submit that the Oil Corporation and, consequently, any one taking title through it, as did the respondent here, is estopped from denying that the coal was used for the fleet upon the credit of which the coal was furnished.

To the same effect as *The Worthington* (*supra*), are *The Schooner Mary Chilton*, 4 Fed. 847; *The Robert Dollar*, 115 Fed. 218.

In *United Hydraulic Cotton Press v. Alexander McNeil*, Fed. Cas. No. 14,404, 20 Int. Rev. Rec. 175, money was advanced to the master on the credit of the ship and spent recklessly by him. The mortgagee of the ship set this fact up to defeat the lien, but the Court held the lien was valid.

In the case of *The Mary*, 1824, 1 Paine, 671, the owner of a vessel gave a bill of sale in the nature of a mortgage but was suffered to remain in possession and act as absolute owner, and her register and other papers remained unaltered. Some eight months thereafter he gave a bottomry bond for money advanced to purchase cargo. Judge Adamson held that upon principle the claim of the lender was to be preferred to that of the mortgagee. This is a leading case and is cited frequently as an authority.

It is quite clear from the preceding authorities that, under the undisputed circumstances in this case, the libellant was entitled at least to the relief given by Judge Brown, namely, to the maritime liens against the several vessels and for the amount of coal actually used by each, irrespective of the fact that the coal passed through coal-loading stations of the owner before it was actually put on board the vessels.

The suggestion of the respondent in its brief opposing the writ of *certiorari* that the Act of June 23, 1910, might be amended by Congress to adjust it to the requirements of modern business conditions is without merit.

No amendment is necessary.

The Act as construed in the case of *The Yankee*, 233 Fed. 919, is a workable, efficient statute and the decision in *The Yankee* is based upon principles of maritime law dating back at least as far as the case of *The Kiersage*, 2 Curtis 421, decided by Justice Curtis in 1855.

The Petitioner maintains that the case of *The Yankee* was correctly decided and that the doctrine of the case should be sanctioned by this Court and applied to the case at bar.

SEVENTH POINT.

THE DECISION OF THE DISTRICT COURT BELOW IN REGARD TO THE APPLICATION OF THE SUM OF \$2,000 TO THE SATISFACTION OF INDEBTEDNESS NOT COVERED BY THE LIBEL HEREIN WAS CORRECT.

It appears from the testimony that the Oil Corporation was indebted to the Petitioner for a balance of several thousand dollars for coal furnished during the year 1913, for which it held a note. *Record*, p. 20. It was also indebted for coal furnished in the early part of 1914, for which it held notes, and it was indebted for the five cargoes of coal in question, for which the libelant had a maritime lien. The account is contained in the Libelant's Exhibits 4 and 5. *Record*, pp. 63-64.

Payment for this coal, for which the Petitioner had a lien, was due on or before the 15th day of each month, for coal shipped during the preceding month. Libelant's Exhibit 5; *Record*, p. 63.

Nothing was paid on account of these five cargoes of May 9, May 23, June 9, June 20 and July 3. Libelant's Exhibit 5; *Record*, p. 63, and the libelant claimed maritime liens for the entire amount. *Record*, pp. 16, 22, 20.

On the 24th day of August, the Oil Corporation gave the Petitioner a sight draft on Proctor and Gamble of Cincinnati for \$2,000, which was subsequently paid. *Record*, p. 31.

The testimony in relation to this transaction is as follows. *Record*, pp. 29-30:

"x-Q. 163. Now, did your company, about August 24, 1914, give to the Piedmont Company

a sight draft on Proctor & Gamble, Cincinnati, for \$2,000 which was subsequently paid?

Ans. That is my understanding.

x-Q. 164. *And upon what account was that payment made?*

Ans. *We left that to them. I don't recall that it was specifically directed what account it should apply to. I don't really know what account they did apply it to.*

x-Q. 165. The only account that they had against you was the account for the coal which you furnished in 1914, and these notes?

Ans. Which were past due.

x-Q. 166. Which were all the——

Ans. Past due.

x-Q. 167. They had been renewed—were they not?

Ans. I don't know.

x-Q. 168. You would not testify that they held any influence if they were past due before that?

Ans. I don't know. I know the original maturity date, whether they accepted the renewals or not, I don't recall.

x-Q. 169. Did you, about August 24, 1914, pay them the sum of \$2000?

Ans. We did.

x-Q. 170. Sent them a draft for \$2000?

Ans. Yes.

x-Q. 171. Did you send that by letter?

Ans. I think we handed it to Mr. Bohannon.

x-Q. 172. I show you a letter addressed by Mr. Bohannon to your company, under date of August 24, 1914, and ask if that is a letter acknowledging the receipt of this draft?

Ans. Yes, that is it.

x-Q. 173. And that draft was paid?

Ans. That draft was paid."

Mr. John S. Brophy, president of the Petitioner Company, testified as follows, *Record*, p. 31:

"Q. 4. (By Mr. Woolsey) Does this statement show the condition of the account between the Piedmont & Georges Creek Coal Company and the Atlantic Phosphate & Oil Corporation for the year 1913 as it existed in February, 1914, with the exception of the last entry?

Ans. That is a statement of the account as it existed after Feb. 9, 1914."

Cf. Libellant's Exhibit 4, *Record*, p. 63.

At page 34 of the Record the following colloquy took place between court and counsel for both parties:

"By the Court: Is there any question of the application of the \$2000?

Mr. Woolsey: That is the only question, sir, and I think we might stipulate that the amounts claimed in the libels are the agreed and reasonable value of the coal furnished as stated in the libels, and that they have not been paid, with the exception of the disputed credit of \$2000 on the Proctor & Gamble draft, and as to that, that is in dispute as to the application of that payment.

Mr. Gardner: We are perfectly willing to stipulate, as I understand it, that the amount of coal contained in those five shipments for which a lien is sought was furnished, that the prices charged for it were fair and reasonable prices.

Mr. Woolsey: And agreed to?

Mr. Gardner: And agreed to, and that it has not been paid for except as the payment of this Proctor & Gamble draft would constitute a payment in part."

At page 39 of the Record, Mr. Brophy testified on cross-examination:

"x-Q. 74. Now, with reference to this \$2000 draft of Proctor & Gamble, that was paid, was it?

Ans. Yes.

x-Q. 75. *You say you credited that on your oldest account?*

Ans. *That is the way it was credited.*

x-Q. 76. *What was that oldest account?*

Ans. That was a note for \$3800.

x-Q. 77. That note, at the time the Proctor & Gamble draft came to you and at the time it was collected, was not due, was it?

Ans. No, sir.

x-Q. 78. And that note was subsequently renewed for the full amount?

Ans. Yes, sir.

x-Q. 79. And you had no other outstanding account against the Atlantic Phosphate & Oil Corporation except the account for these shipments for which you now seek a lien, no account other than notes?"

At pages 40-41 of the Record he testified:

x-Q. 94. *With reference to this \$2000 draft—was that originally credited upon any special note?*

Ans. *No, sir; I think not.*

x-Q. 95. I show you a claim which you made as lienor, or a claim made by the Piedmont & Georges Creek Coal Company as lienor, and signed by yourself as president of that company—or, rather, I show you a paper purporting to be signed, and ask you if that is what it purports to be?

Ans. What is your question?

x-Q. 96. That is a statement of claim made by you in behalf of your company to the Atlantic Phosphate & Oil Corporation?

Ans. Yes.

Mr. Woolsey: It is not a lien claim.

Mr. Gardner: Oh, no; it is a statement of this company against the Atlantic Company.

Mr. Woolsey: In respect to certain collateral.

Mr. Gardner: In respect to what was filed with them as a claim.

Mr. Woolsey: A claim against certain collateral. It speaks for itself.

Mr. Gardner: Very well, I simply identify it.

x-Q. 97. Now, I ask you whether you did not, in this claim, include the three notes, being all that you had and aggregating, as you state in this claim, the sum of \$8,853.32, and did not further state that of that amount the sum of \$6,853.32 remains unpaid, and I ask you if the difference between the amount for which you claim and the amount which you state remains unpaid, is not represented by that Proctor & Gamble note?

Ans. *It was represented by that.*

x-Q. 98. And there was nothing upon your books which showed the appropriation of that sum, of the amount of that draft—any special note?

Ans. At that time?

x-Q. 99. At that time.

Ans. I don't know what the date of that is.

x-Q. 100. That is dated January 4, 1915.

Ans. At that date—at the date of that, why, it was then charged in this.

x-Q. 101. Against the three notes?

Ans. Against one note.

x-Q. 102. On what note was it charged against them?

Ans. Against the \$3800, first note.

x-Q. 103. When was it first charged against the \$3800 note?

Ans. When we were advised that we could apply—when it was within our discretion to apply it against the oldest account.

x-Q. 104. When was that, about the time you made out this statement?

Ans. No. It was before that, if that is dated January.

x-Q. 105. *And then for the first time you made application against that note?*

Ans. Yes.

x-Q. 106. You didn't hold that a special note at the time that application was made, did you; you held another note of which that was a renewal?

Ans. Yes.

* * * * *

x-Q. 107. Now, Mr. Brophy, this paper which Mr. Gardner has just been showing to you that was merely a notice, was it not, with regard to foreclosure of certain collateral which you held?

Ans. Yes.

x-Q. 108. Now do you remember when it was that you charged this \$2000 received from the Proctor & Gamble note against the balance due from the season of 1913 as shown by Plaintiff's Exhibit 4?

Ans. The exact date it was charged, do you mean against that?

x-Q. 109. Yes; when it was charged against that.

Ans. Well, we received the draft for \$2000 in

August—the 25th—apparently, I think the note was renewed in September, and it was not until it passed into the hands of the receivers that we were instructed that we could apply——

Mr. Gardner: Instructed by your counsel?

The Witness: Yes, sir—that we could apply that to the oldest account. We applied it generally on the books; when we first received it it would be cash to the *whole account*.

x-Q. 110. (By Mr. Woolsey): To the *whole account*?

Ans. To the whole account."

When the cash was received on this draft, the *whole account* consisted of

(1) the balance due from 1913, for which there was a note for \$3,800 outstanding;

(2) the amount due for the coal that was furnished in February and March, 1914, for which there were notes outstanding; and

(3) the amounts due for the five cargoes of coal here in question, for which the libelant had a maritime lien.

The total amount of the account, without interest, was \$26,704. *Record*, pp. 108, 109.

When the draft was received, it was received without any direction whatever from the Oil Corporation as to how the Petitioner should apply it, and when it was cashed, the Petitioner received it as cash on account of the whole indebtedness.

The Oil Corporation did not know, and undoubtedly did not care where this small sum of \$2,000 was applied, as it was hopelessly indebted to the Petitioner on notes, and also for these five cargoes of coal, for which the

Petitioner had always claimed a maritime lien against all the vessels. This maritime lien was admitted by the Oil Corporation.

Subsequently, on December 14th, the Petitioner filed five libels for the entire amount of the five cargoes for which they claimed maritime liens.

When the Petitioner demanded payment of the balance that was due it on notes of the Oil Corporation, it then for the first time actually appeared that it had appropriated this \$2,000 in reduction of its oldest account.

Until this case was heard no claim whatever was made by the Oil Corporation, or by anybody representing it, that this payment of \$2,000 had been improperly applied. At the trial it was urged by respondent that the \$2,000 should have been applied in payment on the five cargoes of coal for which the Petitioner claimed maritime liens.

The Court, having partially considered the matter of determining the amount that was due to the respective vessels, but undoubtedly, not having clearly in mind just how or when this coal was actually distributed and the exact state of account between the parties, when the \$2,000 was paid, said, in its first opinion, *Record*, pp. 79-80 [*Italics ours*]:

“There remains a question as to the application of payment to the Coal Company of the sum of \$2,000, made on or about August 24, 1914.

“At this time the Coal Company held notes of the Oil Corporation that were not yet due. The book account for the five shipments of coal for which a lien is now claimed was then due. After the receivership of October 19, 1914, this payment

was credited upon one of the notes, which had been renewed after the receipt of the check for \$2,000.

"To so credit the amount after the receivership would result in prejudice to the mortgagee by subjecting the property to a maritime lien to the amount of about \$2,000.

"I am of the opinion that this payment should be applied to the open account rather than to the notes not due at the time of payment, and that the claim for maritime liens must be reduced by the amount of the payment of August 24, 1914; either by a *pro rata* reduction or by the extinguishment of the claims upon certain vessels, *as shall hereafter be determined.*"

When, however, the draft decree was prepared, it was pointed out to the Court that at the time that this draft was received, to say nothing of the time when it was applied in reduction of the oldest account, the Oil Corporation itself had actually used out of these five cargoes of coal in its *factory* at Promised Land, approximately 891 tons, amounting in value to \$2,337.97, and at its *factory* at Tiverton, approximately 71 tons of the value of \$266.25, and also at Promised Land, there was unaccounted for, 891 tons of coal valued at \$2,925, or a total of \$5,529.32, *Record*, p. 82, for which the Coal Company had no security whatever. In addition it was called to the court's attention that a number of vessels *not before the Court*, but belonging to the Oil Corporation, had also used a portion of this coal, amounting in value, in accordance with the Court's opinion first filed, to the further sum of \$2,686.08. *Record*, p. 81.

Thereupon the Court, in view of the facts before it, on the 10th day of July, 1917, found, *Record*, pp. 80, 81:

"Upon hearing for the settlement of a decree the question arises whether the sum of \$2 000 should be applied in reduction of the maritime liens.

In the opinion filed January 29, 1917, it was said that

'This payment should be applied to the open account rather than to the notes not due at the time of payment.'

The Libelant now shows that the open account on August 24, 1914, the date of payment of the sum of \$2,000, exceeded the maritime liens on the vessels now libelled, and possible liens on other vessels not libelled,* by the amount of \$5,529.32. This was unsecured and was due, whereas the notes referred to in the opinion were for coal previously furnished, and were not due. Under these circumstances I am of the opinion that the libelant, under the ordinary rule, had the right to apply the payment to the unsecured open account; and as after this application there still remains a balance of \$3,529.32 on open account not secured by maritime liens or otherwise, this application does not have the effect of reducing the amount of the maritime liens for coal furnished to these vessels."

After the entry of the decrees on this opinion, the Petitioner discovered that there had been an error made in the distribution of the coal which would account for certain coal which the Petitioner had been unable to trace.

*These vessels were the *Easthampton*, the *Portland*, the *Strong*, the *Sanford*, and the *Adroit*.

The case was reopened. The amended decree in accordance with the true facts was filed, which shows that in respect of the coal used at the factory at Tiverton and at Promised Land, there was due and unpaid to the libellant, for coal from these five cargoes, the sum of \$3,188.73. *Record*, p. 107.

This amount was due at the time the proceeds of the draft were received, and, of course, it was long overdue at the time the proceeds of the draft were actually credited on the oldest account. This did not take into account the amount that was also due for coal which was used by other vessels of the fleet, not before the Court, and against which the Petitioner would have been entitled to a lien if they could have been reached by process.

It is respectfully submitted, therefore, that the finding of the District Court that the \$2,000 should be applied to the unsecured open account was sound and in accordance with the well settled rule, even assuming that the Petitioner made a mistake in supposing it could apply the payment in reduction of its note account.

This case clearly falls within that class of cases where the debtor, having requested no application of the \$2,000, the creditor was at liberty to apply it within a reasonable time where he saw fit, and where his security would be best preserved.

The law in relation to the application of payments is well settled in this country.

Where there are different claims, and payments are made without direction by the debtor how the payment shall be applied, the creditor may apply such payment

to whichever of them he chooses, and at any time before the account is settled or suit brought.

If he does not exercise his right, then the Court will apply it as the law requires. *McCartney v. Buck*, 12 At. Rep. 720.

This is the law as laid down in *Peters v. Anderson*, 5 Taunt. 596, where the Court held that a person who is indebted to another on two several accounts may on paying him money, ascribe it to which account he pleases, and his election may either be expressed or may be inferred from the circumstances of the transaction. But if the debtor does not pay specifically on one account, the creditor may afterwards appropriate the payment to the discharge of either of the accounts that he pleases.

To the same effect are *Upham v. La Favour*, 11 Metcalf at p. 185; *Pennsylvania Company, Appellant*, 7 At. Rep. p. 72; *Leeds v. Gifford*, N. J. Chan., 5 At. Rep. p. 798; *Greenleaf on Evidence*, 15 Ed. Sec. 530-533; *Parker v. Green*, 8 Mete. (Mass.) p. 144.

It also appears equally well settled in the United States that the creditor may exercise his right of appropriation *at any time he pleases*, and this unlimited right has been recognized in the United States, subject only to this restriction, that he cannot appropriate a general payment to a debt created *after* the payment was made. *Greenleaf on Evidence*, 15 Ed., Vol. 2, Sec. 532.

This is the law as laid down by the Supreme Court of the United States in *Mayor, etc., v. Patton*, 4 Cranch, p. 317 (Italics ours) :

"It is a clear principle of law that a person owing money on two several accounts as upon a

bond and simple contract, may elect to apply his payments to which account he pleases, but if he fails to make the application, the election passes from him to the creditor. *No principle is recollected which obliges the creditor to make this election immediately.*"

In *Pearse v. Walker*, 103 Ala., at p. 253, it was said (Italics ours) :

"Some stress seems to be laid by the Chancellor on the fact that the payment was not entered on account of the mortgage with the partnership until more than twelve months after it was made. If this case were to be determined wholly on the right of the creditors to apply the payment, this fact would be of little if any significance. *The general principle is that a creditor's right of application is not limited in point of time. He may make it at any time he elects, but having once made it, he cannot change it without the consent of the debtor.*"

Whether or not the application made by the creditor of this payment of \$2,000 in reduction of its note account was correct, there can be no dispute under the law that when the Court came to make the application it was properly made.

The law in relation to this point is almost elementary that where neither party has made a proper application, the Court will make the application and it will in every case, when called upon to make the appropriation of the payment, apply it to the debt which is least secured. In addition to the cases above cited this is held in *Terhune v. Cotton*, 12 N. J. Eq. Rep. at p. 238, and *Small v. Olden* (Iowa), 10 N. W. Rep. at p. 737.

In the last named case the Court said :

"The law secures to the plaintiff the benefit of all the securities he held, and will so appropriate the sums realized as to secure the payment of both debts. * * * Now, as against the debtor, he is entitled to payment in full of his claims upon them. His securities will be so enforced that this right will be preserved. If the proceeds of the sale in this case are applied *pro rata*, this right will be defeated. If it be applied on the note signed by Jameson alone, it will be defeated. There is no ground which would require proceedings resulting in the defeat of the creditor as to any part of his claim."

This is the law as laid down in *Greenleaf on Evidence*, 15 Ed., Vol. 2, Sec. 533 :

"Therefore, where a general payment is made without application by either party and there are divers claims, some of which are but imperfectly and partially secured, the Court will apply it to those debts for which the security is most precarious."

This is also the decision of the United States Circuit Court in *Cooms v. Tome*, 9 Fed., 532, where the Court said (p. 536) :

"The corporation it is to be observed did not undertake to direct the application, and is not objecting to the appropriation made by Tome. His appropriation is the very one the law itself would have made, in the absence of any by Tome or the corporation; for it is well settled that the law will apply the payment in a way most beneficial to the creditor, and therefore to the debt least secured."

In *Schuclenburg v. Martin*, 2 Fed. 747, the United States Circuit Court says (p. 749):

"In *Field et al. v. Holland et al.*, 6 Cranch, 8, Chief Justice Marshall, in delivering the opinion of the Court, said:

"It is contended by the plaintiffs that if the payments have been applied by neither the creditor nor the debtor they ought to be applied in the manner most advantageous to the debtor, because it must be presumed that such was his intention. The correctness of this conclusion cannot be conceded. When a debtor fails to avail himself of the power which he possesses, in consequence of which that power devolves upon the creditor, it does not appear unreasonable to suppose that he is content with the manner in which the creditor will exercise it. If neither party avails himself of his power, in consequence of which it devolves upon the Court, it would seem reasonable that an equitable application should be made. It being equitable that the whole debt should be paid, it cannot be inequitable to extinguish first those debts for which the security is most precarious. And see *Mayor, etc., v. Patton*, 4 Cranch, 317; *The U. S. v. January et al.*, 7 Cranch, 572."

It is also well settled in the United States that the application of the payment will be made, which is most beneficial to the creditor.

This was decided in *Nichols, Shepherd & Co. v. Knowles*, 17 Fed. 494, where the Court said (p. 495):

"This view is much strengthened by the fact that some of the notes were secured by the indorsement of a third party as well as by the chattel mortgage, from which it may be inferred that the

parties intended to apply the proceeds of the sale of mortgaged property first to the notes not otherwise secured, so as to give the creditor the full benefit of all his security."

No controversy arose here in relation to the application of the payment of the \$2,000 until the time of trial.

It was then too late for the debtor or anyone claiming under the debtor to raise a question as to such application.

In *National Bank v. Mechanics Bank*, 94 U. S. 437, the Supreme Court said (p. 439) [*Italics ours*]:

"The rule settled by this Court as to the application of payment is that the debtor or party paying the money may, if he chooses to do so, direct its appropriation. If he fail, the right devolves upon the creditor. If he fail, the law will make the application according to its own notions of justice. *Neither of the parties can make it after a controversy on the subject has arisen between them, and, a fortiori, not at the trial.*"

In the present case the District Court has made the application in a just way, in accordance with settled principles.

The statement of facts in relation to this transaction as set forth in the brief filed by the claimant in the Circuit Court of Appeals, states:

"Another issue involved in the case relates to the application of a payment by a sight draft for \$2000 sent by the Oil Corporation to the Coal Company on August 24, 1914. At that time the Coal Company held notes of the Oil Corporation which were not due, and they also had a book account against the Oil Corporation for the five shipments of coal now in question. No special ap-

plication of this payment was made at the time, but long after the receivership, the Coal Company credited it on a \$3800 note which in September, several weeks after receipt of the check, had been renewed for its full amount. We claimed at the trial that this payment should have been credited on the open account and that therefore the sum of \$2000 should be deducted from the sum for which the Coal Company sought to establish maritime liens."

It is respectfully submitted, as hereinbefore shown, that this is not a correct statement of the facts.

What is therein called the "book account" was better secured with paramount liens behind it than the notes were, but it is true that no special application of the appropriation of this payment was made to any account until after the receivers were appointed, when it was sought to be applied on the oldest account.

Further, what was contended by the respondent at the trial and at the time that the terms of the draft decree were fixed, was that the payment of \$2000 should be applied "*pro rata in extinguishment of maritime liens on several vessels libeled in this cause*". *Record*, p. 80.

The decisions in the various cases cited in the respondent's brief below on the question of application of payments are not pertinent to the case at bar because the facts underlying them are not similar to the facts here. The universal principle is that the language used in opinions must be applied to the facts in the case in which the expressions are used. *Cohens v. Virginia*, 6 Wheat, p. 264.

If this Court should determine that an improper ap-

plication of this payment was made by the Petitioner, then this case falls within that class of cases, where the District Court had a right to make the application, which in equity and justice should be made.

As it clearly appears that at the time the draft for \$2000 was received and applied, the Oil Corporation was indebted to the Petitioner for coal furnished, which had been used in its factory, for which the Petitioner had no security, to the amount of approximately \$3188.73, the District Court properly held that this \$2000 should be applied in reduction of that amount, rather than to reduce or destroy the maritime lien which the District Court determined that the Petitioner had for coal used on the vessels.

If it be urged here that this to some extent reduced the security of the mortgagee, it can be urged with equal force that the mortgagee took his property with full knowledge that all maritime liens were paramount to the lien of the mortgagee, who practically stands in the shoes of the owner.

It can also be urged that in equity no part of this \$2000 should be applied to reduce the maritime liens against these vessels, since there are still outstanding, unsatisfied, not before the Court, maritime liens against other vessels, viz., the steamers *East Hampton*, *Portland*, *Strong*, *Sanford* and *Adroit* for use of the coal here in question, to a far greater amount than \$2000, of all of which the mortgagee has had the benefit and advantage.

It is respectfully submitted that the decision of the District Court, with the full record before it as to just

how the account stood at the time this draft was received, is sound and should be sustained.

If, however, this Court should hold that the \$2000 should be applied in a different manner than it was applied by the District Court, then, it is respectfully submitted, that it should be applied in extinguishment of the maritime liens against the vessels that are not in custody.

LAST POINT.

THE DECREE OF THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED AND THE DECISION OF THE DISTRICT COURT SUSTAINING THE LIBELANT'S LIENS SHOULD BE REINSTATED WITH A PROVISION FOR RECOVERY BY THE PETITIONER OF INTEREST FROM THE DATE OF THE DECREE IN THE DISTRICT COURT AND WITH COSTS OF ALL PROCEEDINGS IN ALL COURTS TO THE LIBELANT.

Respectfully submitted,

Frank Healy,

JOHN M. WOOLSEY,

F. C. NICODEMUS, Jr.,

H. BRUA CAMPBELL,

Of Counsel for the Petitioner,
Piedmont & George's Creek
Coal Company.

January, 1920.

FILED

MAR 10 1920

JAMES D. HANE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. **58**

PIEDMONT & GEORGE'S CREEK COAL COMPANY,
Petitioner,

vs.

SEABOARD FISHERIES COMPANY,
Claimant, etc.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

**BRIEF AND ARGUMENT ON BEHALF OF SEA-
BOARD FISHERIES COMPANY, CLAIM-
ANT-RESPONDENT.**

ROYALL VICTOR,
Of Counsel.

TABLE OF CONTENTS.

	PAGE
INDEX OF AUTHORITIES CITED.....	III
STATEMENT.....	1 to 14
1. The Shipments of the Coal.....	1
2. Amount of Coal Used by Vessels and by Factories..	2
3. The Contract for the Coal Contemplated the Use of it by the Factories.....	3
4. Title to Coal Passed to Buyer at Seller's Wharves	5
5. The Contract Was for a Season's Supply of Coal..	6
6. The Alteration of the Invoices.....	7
7. Claimant's Title to the Vessels.....	8
8. The Alleged Contract for a Maritime Lien.....	9
9. Short Summary of the Facts.....	13
 BRIEF	 14-55
<p style="margin: 0;">POINT I: APART FROM THE EVIDENCE CONCERNING THE ALLEGED AGREEMENT TO GIVE CREDIT TO THE VESSELS, THERE WAS CLEARLY NO FURNISHING TO THE VESSELS WITHIN THE MEANING OF THE ACT OF JUNE 23, 1910..</p>	
	14
<p style="margin: 0;">POINT II: THE EVIDENCE AS TO THE ALLEGED AGREEMENT FOR A CREDIT TO THE VESSELS CANNOT SERVE TO GIVE PETITIONER A LIEN UNDER THE ACT OF 1910.....</p>	
	37

POINT III: THE RECORD DOES NOT PERMIT PETITIONER TO CLAIM A NON-STATUTORY LIEN UNDER AN EXPRESS CONTRACT OF GENERAL MARITIME HYPOTHECATION. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH ANY SUCH CONTRACT. EVEN IF SUCH A CONTRACT HAD BEEN MADE IT WOULD NOT HAVE CREATED A MARITIME LIEN ON THE VESSELS..... 40

1. *The petitioner is asserting a statutory lien and not a non-statutory lien, and on the record before this Court is foreclosed from asserting a non-statutory lien* 41

2. *The evidence is not sufficient to establish an express contract of hypothecation*..... 41

3. *Even if there had been an express contract of maritime hypothecation attempting to hypothecate each of the vessels to which coal might eventually be appropriated by the owner for the price of the coal so appropriated to it, such a contract could not have given the petitioner a lien superior to the lien of the respondent's mortgage*..... 42

POINT IV: BY DISPENSING WITH THE NECESSITY OF PROVING CREDIT TO VESSELS THE ACT OF 1910 AT ONCE ENLARGES THE SCOPE OF MARITIME LIENS AND SIMPLIFIES THE LAW. TO DISPENSE WITH THE NECESSITY OF A MARITIME DELIVERY WOULD THROW THE LAW INTO CONFUSION AND OPEN THE DOOR TO MANY FRAUDULENT AND COLLUSIVE CLAIMS. MARITIME LIENS ARE STRICTI JURIS. THE PETITIONER'S COMPLAINTS OF THE HARDSHIP OF THE DECISION BELOW ARE THE COMPLAINTS OF A FAVORITE OF THE LAW ASKING FOR FURTHER FAVORS. THE HARDSHIPS, MOREOVER, ARE LARGELY FANCIFUL... 47

POINT V: THE DISTRICT COURT ERRED IN HOLD- ING THAT THE PAYMENT OF \$2,000 MADE BY THE OIL CORPORATION TO THE LIBELANT ON AUGUST 24, 1914, SHOULD BE APPLIED TO ITS UNSECURED OPEN ACCOUNT FOR COAL AND IN SUCH A MANNER AS NOT TO REDUCE THE MARITIME LIENS ON THE SEVERAL VESSELS LIB- ELLED	52
--	----

INDEX OF AUTHORITIES CITED.

Advance, The, 72 Fed., 793.....	45, 46
Advance, The, 71 Fed., 987.....	44
Allianca, The, 65 Fed., 245.....	44
Alligator, The, 161 Fed., 37.....	42, 43
Asiatic Prince, The, 108 Fed., 287.....	53
Astor Trust Co. v. White Co., 211 Fed., 57.....	42, 43, 48
Aurora, The, 194 Fed., 559.....	48
Berwind-White Coal Mining Company v. Metropolitan S. S. Co., 166 Fed., 782 (on appeal, 173 Fed., 471)	30, 32
Berton v. Tietjen's, etc., Co., 219 Fed., 763	44
Bethulia, The, 200 Fed. 876.....	25
Campbell, Mary K., The, 40 Fed., 906.....	53
Cimbria, The, 214 Fed. 128.....	36
Cimbria, The, 156 Fed., 378.....	19, 39, 44
Cora P. White, The, 243 Fed., 246.....	20, 29, 42, 48
Cuddy v. Clement, 113 Fed., 454.....	33
Diefenthal v. Hamburg, etc., Co., 46 Fed., 397.....	44
Dredge A, The, 217 Fed., 617.....	48
Ely v. Murray & Tugurtha Co., 200 Fed., 368	22, 28
Fitz-Henry Smith, Jr. (Article in 24 Harv. L. Rev. 182)	18
Freights of the Kate, The, 63 Fed., 707.....	45, 46
Geisha, The, 200 Fed., 865.....	19, 23, 32
Grapeshot, The, 9 Wall., 129.....	40

	PAGE
24 <i>Harv. L. Rev.</i> 182.....	18
Harvey and Henry, <i>The</i> , 86 Fed., 657.....	44
James H. Prentice, <i>The</i> , 36 Fed. 777.....	34
James T. Furber, <i>The</i> , 129 Fed., 808.....	44
Kalorama, <i>The</i> , 10 Wall., 208.....	40
Kiersage, <i>The</i> , 2 Curtis, 421.....	31
Knickerbocker, <i>The</i> , 83 Fed., 843.....	42
Larch, <i>The</i> , 14 Fed. Cas., 1139; 2 Curtis, 427.....	47
Lulu, <i>The</i> , 10 Wall., 192.....	40
Mary, <i>The</i> , 1 Paine, 671.....	46
McRae v. Bowers Dredging Co., 86 Fed. 344.....	34
Munn v. <i>The</i> Culumbus, 65 Fed., 430.....	42, 48
Murphy Tugs, <i>The</i> , 28 Fed. 429.....	32
Newport, <i>The</i> , 114 Fed., 713.....	42
Overdale, S. S., Co., v. Turner, 206 Fed., 339.....	44
Pacific, etc., Co. v. Leatham, etc., Co., 151 Fed. 440...	44
Patapsco, <i>The</i> , 13 Wall., 329.....	40
Pennsylvania, <i>The</i> , 154 Fed. 9.....	44
Plummer v. Webb, 4 Mason, 380.....	43
Prince v. Ogdensburg Transit Co., 107 Fed., 978.....	48
Sophia Johnson, <i>The</i> , 237 Fed., 406.....	53, 54
St. Jago de Cuba, 9 Wheat 409.....	51
U. S. v. Brent, 236 Fed., 771.....	53
U. S. v. Kirkpatrick, 9 Wheat, 720.....	53
Valencia, <i>The</i> , 165 U. S., 264.....	40
Vigilancia, <i>The</i> , 58 Fed., 698.....	16, 22, 29, 39
Whitecomb v. Metropolitan Coal Co., 122 Fed., 1....	33
Wyoming, <i>The</i> , 36 Fed., 493.....	35
Worthington, <i>The</i> , 133 Fed. 725.....	35
Yankee, <i>The</i> , 233 Fed., 919.....	25, 28
30 Cyc., 1250-1.....	53

Supreme Court of the United States

OCTOBER TERM, 1919—No. 211.

PIEDMONT & GEORGE'S CREEK COAL
COMPANY,

Petitioner,

—against—

SEABOARD FISHERIES COMPANY,
Claimant, etc.

Writ of Certiorari
to the United States
Circuit Court of
Appeals for the
First Circuit.

BRIEF AND ARGUMENT ON BEHALF OF SEA- BOARD FISHERIES COMPANY, CLAIM- ANT-RESPONDENT.

Statement.

Though there is little dispute about the facts, we submit the following statement as the basis for the points to be made in this brief. We disagree with some of libellant's conclusions and desire to clarify certain aspects of the case not fully covered by its brief.

1. *The five shipments of coal for which a maritime lien is claimed and the use to which the coal was put.*

The five shipments are shown in libellant's Exhibit 5 (Record, p. 64). They are the shipments of

May 19	911 Tons
" 23	922 "
June 9	1,187 "
" 20	861 "
July 3	1,439 "
<hr/>	
	5,320 Tons

The shipment of June 20 went to Tiverton, the rest to Promised Land. The coal, therefore, was delivered as follows:

To Promised Land	4,459 Tons
To Tiverton	861 "
	<hr/>
	5,320 Tons

The way in which the coal was used was as follows (see Amended Final Decree in Case No. 1359; Record, pp. 106-107):

	Promised Land Coal-Tons	Tiverton Coal-Tons	Total
By libelled vessels	2,778	626.5	3404.5*
By vessels not libelled	790	163.5	953.5
By factories on shore	891	71	962
	<hr/>	<hr/>	<hr/>
Total	4,459	861	5320

It thus appears that between one-fifth and one-sixth of the five shipments was used by the factories on shore.

2. *The amounts used by the vessels coaling at Promised Land are merely estimates. There is no telling how much of the coal for which liens are claimed was actually used by the different vessels.*

This is due to the fact that the four shipments of coal to Promised Land were mingled in the bins there with 1,068 tons of coal previously delivered and paid for (Record, p. 107). This mingling of coal for which liens are asserted, with coal for which no liens are asserted, is undisputed. Therefore, as to the shipments to Promised

*The number of tons (3509.5) shown in the tabulation on p. 28 of petitioner's brief is incorrect. There is an error in the footing, which should be 3,409.5 instead of 3509.5; and the amount used by the *Herbert M. Edwards* should be 424 tons instead of 429. (See Rec., p. 137.)

Land, there was no possible way of proving (and there was no attempt to prove) just how much of the lien coal was used on the steamers that coaled there. It *may* be that most or all of the original 1,068 tons went into the steamers, which would by so much have reduced the amount of lien coal used by them, and by so much increased the amount of lien coal used in the factories. Or vice versa. There is no telling. Also there is no telling which vessels used more than their proportion of lien coal and which less. The books of the Company merely showed the total amount of coal that each steamer used. The bookkeeper made an estimated reduction from these amounts, based on the proportionate amounts of lien and non-lien coal, to arrive at the amount charged as a lien against each vessel. In other words, as to the vessels coaling at Promised Land, both the items and the total shown on page 28 of libellant's brief are merely estimates. The bookkeeper's method of calculation is shown by his evidence on the motion to reopen the cases (Record, pp. 89-104). It is also undisputed that the commingling of the coal was perfectly lawful and within the contemplation of the parties.

3. *The contract for the coal was a contract contemplating both a maritime and a non-maritime use of the coal by the purchaser, and the seller perfectly understood that the coal was to be used by the purchaser's factories on shore as well as by the purchaser's vessels.*

We do not understand that libellant disputes this. As Judge Dodge has said:

"There can be no doubt that according to the understanding between the parties some at least of the coal to be furnished would be needed in the factories, and the oil corporation was left, so far as any understanding with the libellant was concerned, to use the coal either in the factories or

on the vessels of its fleet as it might subsequently desire."

The oil company's vessels caught fish and its factories made them into oil. Its vessels loaded at its factories. The coal company was supplying its coal requirements for the season of 1914 (see Meadows, Record, p. 16, Q. 16; p. 21, QQ. 67-70; p. 28, QQ. 152-156). When the parties came to reduce their agreement to writing (Claimant's Exs. 8 and 9, letters of May 28, 1914, Record, pp. 68-69), the agreement was spoken of as an agreement "for the furnishing of your coal requirements at Promised Land and Tiverton for the current season," and as an agreement "relative to our requirements of coal at Promised Land and Tiverton for the coming season." Similarly in the earlier contract of February 13th, covering the first of the nine deliveries (Claimant's Ex. 1, Record, p. 67), the cargo was spoken of as "being an advance of material necessary in the operation of the plant and steamers. * * *" As shown above, between one-fifth and one-sixth of the coal comprising the last five shipments (the shipments in question) was used in the factories. The contract for the coal, therefore, was not a maritime contract. (The authorities are cited in the brief.) The statement on page 11 of Petitioner's brief, to the effect that the distribution of the coal "among the vessels" was left "to the agency of the oil corporation itself," is therefore, if not misleading, certainly incomplete; for not only was the distribution of the coal among the vessels left to the oil company but also its distribution between the vessels on the one hand and the factories on the other. The further statement on the same page of the brief that, as to the coal used in the factories, the petitioner "either lost or failed to perfect its maritime lien" is singular, inasmuch as petitioner cannot possibly claim that it had any right whatever under the contract to direct how the

coal should be used—whether for the factories or for the vessels.

Indeed, it may be doubted whether the oil company would have been guilty of any violation of its contract obligation if it had resold all the coal thus delivered to it, using none of it, either for its factories or for its plant. But, however that may be, there can be no possible dispute that the oil company had the undoubted right, at the very least, to appropriate (as it did appropriate) for its factories whatever coal these might require, be the amount large or small, out of any shipment ordered.

4. *Title to the coal in question passed to the oil company, and delivery to it was made, on its being loaded into the barges by which it was conveyed to Promised Land and Tiverton.*

This is clearly shown by the exhibits. The letter of May 28, 1914, from Mr. Bohannon of the coal company to Mr. Meadows of the oil company (Record, p. 68), which "confirms" their oral contract of "a few days ago" seems to have reference to an oral agreement made between Bohannon and Meadows at or prior to the first of the five shipments in question, the shipment of May 19th (Record, p. 64); for the so-called "order" for this shipment (Record, p. 59) is dated May 29th, the day after the letter of May 28th. This letter gives the price of the coal as "\$3.10 gross ton, New York loading piers." The "order" of May 29th shows the price as "\$3.30 gross ton delivered c. i. f. Promised Land." Mr. Meadows testified that two of the five shipments in question were delivered on barges belonging to the oil company and the others on barges belonging to the coal company (Record, p. 28, QQ. 147, 151). The two shipments in oil company barges are evidently the seventh and ninth of the nine shipments shown on Record, p. 64, and the price for these

shipments was the contract price specified in the letter of May 28th, namely \$3.10, and the deliveries were f. o. b. St. George, and Port Reading respectively. (See also the corresponding orders: Order of June 8, Record, p. 59, and Order of July 2d, Record, p. 60.) In short, the contract was in effect f. o. b. the coal company's loading piers, except that when the coal was shipped in the coal company's barges, instead of in those of the oil company, the price of carriage and insurance was added and the orders were on a c. i. f. basis (See orders of May 13, May 29 and June 17, Record, pp. 58-60). Title, therefore, to the coal clearly passed to the purchaser at the loading points and not at the place of ultimate delivery. This is in accord with Judge Dodge's opinion, which states:

"The above facts regarding said shipments from the libellant's piers, not referred to in the opinion below, but appearing from the invoices and bills of lading relating to the shipments, indicate that delivery of all the coal so shipped to the oil corporation took place at the libellant's loading piers."

(The invoices and the bills of lading are not printed in the Record. See Stipulation, Record, p. 71.)

We do not understand that Judge Dodge's view as above expressed is disputed by the petitioner.

5. *The contract for the coal.*

That there was a contract between the parties and that it was a contract for the oil company's season's needs of coal, both ashore and afloat, cannot be doubted. Judge Dodge in his opinion says that the contract

"was never completely embodied in any written document."

While this may be true, the general terms of the prior oral agreement are at least clearly evidenced by the two letters mentioned above under date of May 28, 1914 (Claimant's Exs. 8 and 9, Record, p. 68-69). The letter from the coal company to the oil company begins:

"This is to confirm agreement for the furnishing of your coal requirements at Promised Land and Tiverton for the current season, coal to be invoiced as follows":

Amounts and prices are then stated, and the letter concludes with the following sentence:

"This is not a formal contract, but is as per the writer's understanding with you a few days ago."

The oil company's reply of the same date states that the prices mentioned "are in accordance with our understanding of the agreement and are satisfactory," and concludes with the following statement:

"If at any time you wish a more formal contract than this letter we shall of course be glad to supply it."

6. *The alteration of the invoices.*

Petitioner's statement of facts does not perhaps make it quite clear that all the shipments of coal were originally invoiced to the oil company and charged to the oil company on the coal company's books, and not billed and charged on the books of the coal company to the vessels of the oil company's fleet. The fact, however, is not disputed (See Meadows, Record, p. 25, Q. 129, and pp. 26-28). In September, 1914, after all the coal had been delivered and when the coal company was threatening libels against all of the oil company's vessels, the coal company was induced to libel only the five best boats. In furtherance of this plan the head-

"Q. 30. Now, Mr. Meadows, it was the understanding between you and the Piedmont and George's Creek Coal Company that all the coal furnished under those orders should constitute a maritime lien against the vessels. A. That was our agreement" (Record, p. 17).

A. "There was letters exchanged in which we specifically recognize our obligation and our agreement with these gentlemen that prior liens did exist" (Record, p. 19).

"Q. 48. Well, had there been any record made on your books as to the boats to be chargeable for these liens, the boats against which the liens were to be impressed? A. There had been no singling out of vessels, nothing except the entire fleet had been referred to prior to his visit" (Record, p. 19).

"Q. 56. By whom was this change in the invoice made? A. It was made by us.

"Q. 57. Made by you? A. Yes."

"Q. 58. And was the making of that in pursuance of the prior agreement with regard to the maritime lien. A. Pursuant to that, and picking out five vessels instead of the lien continuing against the whole set of 19" (Record, p. 20).

"A. * * * A proposition was made which, as I have testified, Mr. Brophy would not accept, and then in March, I think, the arrangements were finally consummated" (Record, p. 21).

"C. Q. 97. But that no specific vessels were picked out. A. It was agreed specifically they should have a lien on the vessels that would operate consuming coal.

C. Q. 98. On all the vessels? A. That was an agreement made at the time the coal was arranged for" (Record, p. 23).

"C. Q. 109. And up to that time your agreement with the Piedmont Company had been that they should have a lien upon your vessels generally? A. Upon all the vessels.

C. Q. 110. Up to that time no special vessels had been mentioned? A. Yes; each had been mentioned.

C. Q. 111. Each of the 19? A. Each of the 17.

C. Q. 112. But none had been picked out to be made the subject matter of the lien? A. Yes; they had all been picked out. The only difference as we say absolutely, the only difference that resulted from Mr. Brophy's conference was that we induced him to bring his action against five boats instead of against the 17" (Record, p. 24).

"Q. 174. (By Mr. Wooley) What was the total amount of coal which you arranged to secure from the Piedmont Company? A. It is contained in one letter there—the May 28th, I believe—where it was finally confirmed, something over 10,000 tons.

Q. 178. And for that you were to give maritime liens on your entire fleet? A. Yes" (Record, p. 31).

Clearly none of the above statements adds anything to Meadows' report first quoted above of his conversation with Bohannon.

Mr. Brophy, the president of the coal company, knew nothing about the matter except what Bohannon had reported to him and what he had instructed Bohannon. He was allowed to state that his instructions to Bohannon were as follows:

"I agreed to extend them credit provided their account was absolutely secured by maritime liens" (Record, p. 39).

On cross-examination he was asked, "All you know about this matter at all, whether any agreement was made, is from statements which were made to you by Mr. Bohannon?" He answered, "That is correct" (Record, p. 39).

Now, Mr. Meadows was perfectly right in his statement that the law would permit the coal company to "hold and maintain a maritime lien on the steamers,"

and that the coal company "had a perfect right to use the credit of the steamers in the acquisition of coal."

All that the coal company had to do in order to acquire its lien was to deliver the coal to the vessels in the manner required by the statute—and, as we shall show, the coal company could easily have done this with very little trouble or expense to itself. And this the oil company expressed its willingness to have done. We submit that it is only in this sense that the evidence shows any "express contract" for a maritime lien. If the evidence shows anything more, what it shows is that the parties misunderstood the law and conceived that the statute gave a supply man a maritime lien for supplies ultimately delivered upon and used by vessels under a contract of sale like the one in question, without requiring the supply man to make the statutory delivery to the vessels.

We do not believe, and we shall try to show, that even if the parties had expressly and formally contracted for a lien on such of the coal as the oil company might eventually choose to appropriate to its vessels under a contract like the one in question, a maritime lien could be so obtained. In this statement, however, we desire merely to give our reasons for urging that the evidence is clearly insufficient to show that any such express contract was made.

9. Short summary of the facts upon which the petitioner claims a statutory maritime lien.

We have a contract for a season's supply of coal. It is perfectly understood and agreed that some of the coal is to be used by the buyer to coal its fleet and some for shore purposes, according to the buyer's needs during the season. The contract is silent as to whether orders under it for shipments shall specify a maritime or non-

maritime use of the whole or any part of any particular shipment, and the orders under it make no such specifications, being merely for the buyer's general requirements. These orders are filled by delivery to the buyer at the seller's wharves. At the buyer's wharves the coal is unloaded, not into or alongside the vessels but into the owner's bins, in which it will await the buyer's subsequent appropriation of it to its factories or to its steamers. The seller has no power to direct the proportions in which this appropriation shall be made. It is known moreover to the seller that these bins may contain (and one of them does contain) other coal with which it will be perfectly permissible for the buyer to mix the contract coal, and with which the buyer in fact does mix it.

In addition to this we have the evidence above set forth relative to the alleged contract for a maritime lien.

POINT I.

APART FROM THE EVIDENCE CONCERNING THE ALLEGED AGREEMENT TO GIVE CREDIT TO THE VESSELS, THERE WAS CLEARLY NO FURNISHING TO THE VESSELS WITHIN THE MEANING OF THE ACT OF JUNE 23, 1910.

We think that the petitioner's contentions can best be analyzed by first considering the facts apart from the evidence relating to the alleged contract for a maritime lien. The initial question, therefore, is whether the facts as stated above, and without reference to this evidence, show a "furnishing" of supplies "to" the vessels within the meaning of Section 1 of the Act of June 23rd, 1910 (36 Stat. 604). The coal unquestionably was delivered on the order of the owner. Was it "furnished to" the vessels?

There is no doubt that the expression "furnishing to a vessel" as used in the maritime law, and when used with reference to the furnishing of supplies, indicates something more than a sale or delivery to an owner *for* the vessel. The phrase imports a personification of the vessel, and the notion therefore is of a direct dealing with the vessel. The phrase sometimes includes the notion of dealing with the vessel in a strictly contractual sense; that is to say, it sometimes includes the notion of a giving of credit to the vessel. But in its more ordinary sense, it is used in a non-contractual way as importing the active agency of the seller in effecting the delivery of the goods directly to the vessel. That this is the way in which the phrase is used in the Act of 1910 will be shown under Point II. Just as the furnisher of supplies in "giving credit to the vessel" is conceived as contracting with the vessel itself, so the "furnishing to" the vessel required by the maritime law—where the phrase is used as signifying the act of delivery to,—means that the seller must do something that can properly be regarded as a bringing of the goods by himself to the vessel. In other words, the test of a maritime delivery to the vessel is not that the goods are ultimately destined for the vessel. The goods must be appropriated to the vessel by the seller and not by the owner.

The broader use of the expression "furnishing to a vessel," to indicate a credit given the vessel, and its more special use to indicate a delivery to the vessel are, though related, entirely distinct. Not only, as will appear, does the Act of 1910 make this clear, but the cases decided before the Act also show that a maritime lien is not obtained unless there is both a credit to and a delivery to the vessel. The fact that the supplies have been delivered "to" the vessel in the maritime law sense may frequently (where the question is material) afford evidence that credit was given to the vessel and not to the owner. But the

converse is obviously not the case. To whom credit is extended is a question of contract—of intention—and evidence of intention may be found in the acts of the parties. What, however, determines whether supplies have been delivered “to” a vessel is the *acts* of the seller with reference to the supplies, not his understanding or agreement as to his security.

Prior to the statute a credit to the vessel was presumed without more only in a rather narrow range of cases—generally speaking, only where the supplies were delivered to the vessel in a foreign port on the order of the master. In other cases, a credit to the vessel had to be specifically proved or implied from the particular circumstances. The cases were in considerable confusion, and the plain object of the statute was to dispense with the necessity of proof of an express or implied agreement to give credit to the vessel in all cases where the supplies had been delivered to the vessel on the order of the persons named in the Act.

No case, either before or under the Act, has been cited in which it has been held or even intimated that evidence of an agreement or intention to give credit to the vessel could dispense with the maritime-law requisite of a furnishing to the vessel, in the sense of a delivery to the vessel. The cases of express contracts of maritime hypothecation will be discussed under Point III.

What then constituted, as regards supplies, a “furnishing to” a vessel in the sense of a delivery to the vessel?

The most frequently cited case is *The Vigilancia*, 58 Fed. Rep., 698. In that case the vessels lay in their home port, New York. A maritime lien was claimed for oleo-margarine supplied to them. It was illegal to sell oleo-margarine in New York. The goods were therefore ordered by telephone from the libellant in New Jersey. The libellant

delivered them to truckmen in Jersey City, who took them to the vessels in New York and there delivered them on board. The libellant's contention was that the sale, therefore, was complete in New Jersey. Conceding this to be true, the Court held that for the very reason that the sale was completed in New Jersey, there could be no maritime lien. The Court said (p. 700):

"If, on the other hand, the libelants' evidence be deemed sufficient to prove that the title to the property passed in Jersey City to the steamship company, and that the delivery to the truckman there was, in law, a delivery to that company; still, that would not amount to a delivery, or to a furnishing of supplies, to the ship in Jersey City; but only to a common-law delivery to the company, sufficient to bind the company in personam; which is a very different thing from a delivery to the ship, or binding the ship *in rem*. The ship was not in Jersey City; but within a different jurisdiction, a mile or two away.

"There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship. *The Cabarga*, 3 Blatchf. 75; *Pollard v. Vinton*, 105 U. S. 7, 9-11; *The Caroline Miller*, 53 Fed. 136; *The Guiding Star*, Id. 936, 943, and cases there cited.

"Had the goods in question been lost while in transit from Jersey City to Roberts' Stores, where the ship lay, the steamship company might possibly have been personally liable for the goods; but plainly no lien for them could have arisen against the ship, because they would never have come to the benefit of the ship.' Per Nelson, J. (*The Cabarga*, supra). No, lien, therefore, arose when the goods were delivered to the truckmen in Jersey City, since the ship had not yet received the goods, and might never receive them. Something more had to be done, viz., to deliver them to the ship. As that delivery was

an act necessary to the creation of a maritime lien, it follows that the 'furnishing to the ship,' so as to acquire a lien, was only completed at the place where the ship herself actually was.

"As this was in the home port, no maritime lien could arise."

The Vigilancia has been frequently cited with approval in later cases, and shows of course clearly that a furnishing to the vessel in the sense of a delivery to her is as much a requisite of a maritime lien as a credit to her. It should also be noted in connection with *The Vigilancia* that when the supplies were ordered they were ordered for a vessel then named, and that they were actually delivered directly to the vessels by the truckmen.

The Vigilancia was a pre-statutory case; but there can be no doubt whatever that the Act of 1910 uses the expression "furnishing to" in its well recognized maritime meaning.

We quote the following from an article on the Act of 1910 by Mr. Fitz-Henry Smith, Jr., entitled "The New Federal Statute Relating to Liens on Vessels," 24 Harv. L. Rev., 182, 200:

"And under the federal statute, as under the general maritime law, the things furnished must at least be 'appropriated' to the use of a designated vessel. For there can be no claim upon a given *res* unless it be shown that the necessities (or services) were furnished specifically to that *res*. * * *

"The Act of Congress is perhaps open to criticism for not defining the meaning of the term 'furnish.' That an explicit definition of this word would be beneficial may be admitted, for there is at present a conflict of authority upon the subject. Thus it is set forth in some cases that no lien can exist unless the supplies and repairs are actually used by or incorporated in the vessel; while others do not lay down so strict a rule. But the difficulty

of determining just where the line should be drawn led to the omission of any definition in the law, and the courts, as heretofore, must decide upon the facts in each particular case. The view of Addison Brown, J., in *The Vigilancia*, seems to be one now most generally recognized, namely, that 'There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship in rem, until the goods are either actually put on board the ship or else are brought within the immediate presence or control of the officers of the ship'."

So, in *The Geisha*, 200 Fed., 865, a decision under the Act by the District Court for the District of Massachusetts, Judge Dodge said (p. 868) :

"To maintain a lien under that Act for materials to be used in repair, the materialman must show them to have been actually 'furnished to' the vessel, and I think the intended meaning of that phrase as used in the Act can only be the meaning generally given to it in the maritime law."

In *The Cimbria*, 156 Fed., 378, a lifeboat was ordered by the owner for the vessel, which was lying in her home port, Bangor, Maine. It was ordered by telegram and letter to be shipped f. o. b. New York. In ordering the lifeboat, *The Cimbria* had not been specifically mentioned or referred to, but she was the only vessel then owned by the owner, and this the libelants knew. The Court also found that the lifeboat was intended for *The Cimbria's* use, and that the libelants

"so far as their own intent is concerned, gave credit to *The Cimbria* for the price of the lifeboat, and did not rely on the sole personal credit of her owner."

There was also ordered in substantially the same way from another libelant in Providence, Rhode Island, certain repair parts for the vessel's boilers.

The Court held that neither libelant had acquired a maritime lien. The Court said (p. 382, italics ours):

"Neither of these petitioners can be held to have acquired any lien under the general maritime law. There are two reasons, *either of which would be sufficient*. The petitioners did not furnish these supplies to the vessel in the sense of the maritime law. The property in the goods passed to the owner of the vessel in New York and in Providence. Delivering goods to a carrier in New York or in Providence for transportation to a vessel in Bangor is not furnishing the goods to the vessel. 'There can be no delivery to the ship in the maritime sense, whether of supplies or cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship.' *The Vigilancia* (D. C.), 58 Fed. 698, 700)."

The other reason for denying the lien was that the vessel at the time was in her home port.

It appears, moreover, that certain other repair parts for the vessel were ordered from Boston and were shipped to the vessel and put on her in Boston. As to these supplies it was also held that the seller had acquired no maritime lien: first, because the articles had not been "furnished" to *The Cimbria* in the sense of the maritime law, either at Providence or at Boston"; and second, because (the case being a pre-statutory case) the evidence showed that the buyer had not relied on the credit of the vessel (p. 388).

A recent case under the statute almost identical with the case at bar on its facts with respect to the general contract under which the supplies were sold and the method of delivery thereunder is *The Cora P. White*, 243 Fed. 246, decided by the District Court for the District of New Jersey. Various supplies, including food, groceries, coal and a seine had been ordered by a steamship

company, which operated fishing vessels and also a factory on shore. Except the seine, all the goods ordered were useable either on the company's vessels or by its factory. The seller knew this to be the fact, but did not know and did not specify in what proportions the goods were to be used for vessels or for shore purposes. Three-quarters of the coal seems to have been used by the vessels and two-thirds of the culinary supplies. All the goods were ordered generally and were sold f. o. b. the sellers' places of business. It was held that none of the sellers had acquired a maritime lien. It is true that in this case there was no evidence that any of the sellers had relied on the credit of the vessel; but we think that a reading of the opinion will convince the Court that the decision would have been the same, even if this had not been the fact. The Court, after discussing a number of the cases relied on by the petitioner here and holding them to be inapplicable, spoke as follows (pp. 249-250) :

"The difference between those cases and the instant one is radical. In those the supplies were furnished or the services rendered to the vessels on orders so to do. In the case at bar the goods were ordered by the general manager of the Fertilizer Company without mention that they were intended for use on a vessel. They were not delivered or consigned to any vessel by the furnishers, but to the owner, as had been the practice for years.

"In the case of coal, food, and culinary supplies, these were stored by the owner at its factory. Their arrival there was not a mere arrest or stoppage in *transitu*, but, so far as their delivery is concerned, they had reached their final destination. If the goods are furnished to the vessel in good faith, the materialman is not answerable for their misapplication. *The H. B. Foster*, *supra*. If not furnished to the vessel, their subsequent use thereon will not create a lien, as the furnisher's right to a lien arises, if at all, from what occurred at the time the supplies were ordered or furnished, not from

ordered these repairs to be made at the libelant's wharf and sent her there for the purpose of receiving them, may not be heard to say that the libelant has not furnished them, the competing lien claimants are under no such disability. They have a right, not to be disregarded, to a strict construction of the statute, and to demand full proof of compliance with the conditions upon which liens may be acquired under it. * * * In view of the facts that the libelant had furnished the sections on the wharf all ready to go on board, and that it would unquestionably have done the little remaining to do in order to get them on board, but for a condition of affairs for which the owner was solely responsible, I shall hold that it furnished the sections to the vessel within the meaning of the act, and allow the \$140 which it paid for them."

The opinion of the Court also calls attention to the difference between state statutes giving liens for supplies, etc., "for or on account of" vessels or "for" vessels, etc., and the Act of Congress "which requires proof that the repairs have been furnished 'to' the vessel." The Court said (p. 868):

"The state statutes dealt with in the two cases just referred to, like many similar statutes of other states, made the lien depend upon proof that materials had been furnished in the repair of a vessel. The act of Congress now under consideration requires proof that the repairs have been furnished 'to' the vessel; so that cases under state statutes like those referred to do not deal with the precise question now presented."

See also *The Bethulia*, 200 Fed. 876.

The case on which the petitioner chiefly relies is *The Yankee*, 233 Fed. 919 (C. C. A., Third Circ.). The *Yankee* was a dredge and was engaged in dredging the Delaware River south of Philadelphia. Liens were claimed for

various supplies ordered for her. The facts as to these supplies were as follows (p. 921):

"Each order specified the supplies to be for *The Yankee*, and in each instance the supplies were forwarded to her pursuant to shipping instructions accompanying the order. These instructions varied according to the source of the supplies and to the railroad over which they were to be shipped, but in each instance the instructions designated a wharf or pier in Philadelphia to which the supplies were to be delivered, whence they were carried either by tugs or barges of the Dredging Company or by other river craft to the *Yankee* in her position on the lower river.

"The transaction of delivery which best presents the position of the claimant, is that of Charles H. Whitney and Company. The Dredging Company inquired of that company its price for dredge pipe. Whitney and Company replied, quoting price 'f. o. b. works' at an interior point in Pennsylvania, 'freight allowed to Philadelphia.' The Dredging Company gave the order as follows:

" 'Ship to Atlantic Dredging Company at Christian Street Wharf, c/o Armstrong and Latta Company, via P. R. R., marked 'For Dredge *Yankee*,' immediately, 1000 feet I. D. pipe.'

"Pursuant to these instructions, the pipe was marked and billed 'For Dredge *Yankee*,' and shipped over the Pennsylvania Railroad to Christian Street wharf in Philadelphia, at which place it was unloaded by the Dredging Company and then loaded on one of its barges and towed to *The Yankee*, and by her received and used as a part of her tackle and equipment. The claimant maintained, and the Commissioner found, that as these supplies were not delivered by the libellant directly to the vessel, but were delivered to her by means of transportation instrumentalities which were not the agents of the libellant, the transaction, therefore, did not constitute 'furnishing * * * supplies * * * to a vessel' within the meaning of the act conferring a maritime lien, but constituted a delivery to the Dredging

Company at the interior point of consignment in completion of a common law sale to that company."

The Court held that these facts were sufficient to give the suppliers a maritime lien under the Act. The precise holding of the Court is as follows (p. 925):

"But as against the contention of the claimant, we hold that a material man may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from their point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it."

Among the supplies furnished was certain coal, which had evidently been ordered and shipped under a contract to supply coal "for the whole fleet" to which *The Yankee* belonged.

As to this coal, all the opinion contains is the following (p. 927):

"With respect to the claim of the last named libellant, which grew out of a contract to supply coal for the whole fleet, we are satisfied that in giving the order, the quantity to be supplied to and daily consumed by *The Yankee*, was mentioned and considered by the parties, and that of the total amount of coal supplied, a definite portion was appropriated for and furnished to *The Yankee* within the rule of law applicable in such cases. *The Kiersage*, Fed. Cas. No. 7762; *The Murphy Tug* (D. C.), 28 Fed. 429; *McRae v. Bowers Dredging Co.* (C. C.), 86 Fed. 344."

Though the matter is not as clear as it might be, we think that the Court considered the facts in regard to the

coal to differ from the facts in regard to the other supplies only in the circumstance that the coal for *The Yankee* was ordered under a general contract to supply coal for the whole fleet, but that, *so far as the orders for coal under this general contract were concerned*, the orders were like the orders for the other supplies, namely, that they specified the coal to be for *The Yankee* and that in each instance the supplies were forwarded to her pursuant to shipping instructions accompanying the order.

If that is so, the case goes no further than the case of *Ely v. Murray & Tregurtha Co.* (supra), except in so far as it contains no suggestion that the rule might not apply as against a prior mortgagee. But however that may be, it is clear that the facts in *The Yankee* are in at least two vital particulars totally different from the facts in the case at bar. In the first place, in *The Yankee* the general contract was a contract for coal to be used solely by the vessels of the fleet and not partly by vessels and partly on shore. In the second place, there is nothing whatever in *The Yankee* to show that the coal delivered to *The Yankee* was first turned over to the owner to be later appropriated by him to *The Yankee* or to the other vessels of the fleet in such as yet unascertained quantities as the vessels might require; for the opinion states distinctly that the quantity to be supplied to and daily consumed by *The Yankee* was mentioned and considered by the parties and that a definite portion of it was appropriated to her use. It should, moreover, be noted that (assuming the decision as to the coal goes further than we think it does, and further than Judge Dodge thought it did) the question involved was given very scant consideration by the Court, and the only cases cited are three cases which, as will shortly appear, are totally inapplicable to the facts in the instant case.

The cases prior to *The Yankee*, therefore, go no further than this: that when definitely specified supplies

are ordered for a definitely specified vessel and are started by the seller on an uninterrupted course of transportation which ends at the vessel, the supplies have been furnished "to" the vessel, even though the supplies were delivered to the owner under a contract by which title passed to him en route. In *Ely v. Murray & Tregurtha Co.* (supra), Judge Dodge expressed a strong doubt as to whether this would be the rule as against prior mortgagees. In *The Yankee*, however, no such limitation of the rule is suggested, though it is difficult to see how the case can be reconciled with *The Vigilancia*. And, if the petitioner is right in its interpretation of the facts in *The Yankee*, the decision goes one step beyond this—namely, in holding that the seller may acquire a statutory lien where, under a general contract to supply the vessels of a fleet, a definite part of the whole is estimated to be for the use of some particular vessel and that particular part of the whole is actually appropriated and delivered to that vessel.

Nothing of that sort, of course, has been shown in the case at bar. The contract was not merely a general contract, it was a contract to supply the non-maritime as well as the maritime needs of the owner. Not only that, but there was no estimation of the relative amounts to be used on shore and by the vessels and no estimation of the relative amounts to be used by the particular vessels. There was no such estimation either in the contract itself or in the orders under it. The seller did not start the goods upon a continuous course of transportation from himself to the vessel. The supplies went into the owner's general stores. Their subsequent appropriation was to be made by him and by him alone. The statements of the Court in *The Cora P. White*, supra, as to the situation there are exactly applicable here:

"Their arrival there was not a mere arrest or stoppage in transitu, but, so far as their delivery is

concerned, they had reached their final destination * * *. They were ordered on the owner's general order to be held in store, for use at its convenience, as its business should subsequently require."

And finally, as shown above in our statement of the facts, the coal was mingled with other coal for which no lien could be claimed in such a manner that it could not even be proved how much of it was in fact used on any of the libeled vessels.

There is not even so much as a hint in any of the cases, either before the statute or since, that supplies sold for an eventual partial use on vessels, and delivered, as these supplies were delivered, under a contract and orders such as have been proved here, have been delivered "to" the vessels or to any of them in the maritime sense.

The facts in the other cases cited in petitioner's brief show the decisions in them to be wholly inapplicable.

Berwind-White Coal Mining Company v. Metropolitan S. S. Co., 166 Fed., 782, on Appeal, 173 Fed. 471 (cited on p. 29 of petitioner's brief). The case was in equity and arose under a New Jersey statute which provided that:

"Whenever a debt shall be contracted by the master, owner, agent or consignee of any ship or vessel within this state * * * on account of any work done or materials or articles furnished in this state for or towards the building, repairing, fitting, furnishing or equipping such ship or vessel * * * such debt shall be a lien upon such ship or vessel, her tackle, apparel and furniture, and continue to be a lien on the same until paid, and shall be preferred to all other liens thereon, except mariners' wages."

The first two pages of Judge Putnam's decision in the lower court show clearly that the language quoted

from it by the petitioner in its brief is entirely inapplicable to the question here presented. Judge Putnam begins by speaking of the liens as "mechanics' liens," and states (p. 783):

"Whatever there is before us is in no way of a maritime character, and represents labor and materials furnished in the State of New Jersey by the petitioner then resident in New Jersey, upon these steamers, which were brought into New Jersey as hulls for the purpose of receiving the machinery in question here."

Having stated that the contract for the installation of the machinery in both steamers was a single one, he cites three cases under a Maine statute, which he says "is in substance the same as" the New Jersey statute. One of these cases is *The Kiersage*, 2 Curtis, 421 Fed. Cas. No. 7762, as to which the opinion states (p. 784):

"The circumstances in that case were substantially the same as they are here, but Mr. Justice Curtis found no sound reason why the lien should not be sustained as to each vessel for the materials which actually went into it."

He also refers to a similar result reached under a Massachusetts case.

It is plain that a state statute which gives a lien for a debt incurred for work and materials furnished "for or towards" the building, etc., of a vessel can be no authority whatever on the question as to what is meant by the maritime law expression "furnishing to a vessel."

On the appeal in the Circuit Court of Appeals, practically the only question discussed was whether the lien given by the New Jersey statute could be enforced in equity in a Federal Court against the vessel in another state.

The Kiersage, 2 Curtis, 421 (cited on page 29 of peti-

tioner's brief). Precisely the same remarks apply to this case.

The Maine statute provided as follows:

"Any ship carpenter, caulker, blacksmith, joiner or other person, who shall perform labor or furnish materials, *for or on account of any vessels* building or standing on the stocks or under repairs after having been launched, shall have a lien on such vessel for his wages or materials until four days after such vessel shall have been launched, or such repairs afterwards shall have been completed."

The District Court held the libelant entitled to a lien on both the vessels for which the supplies in question had been furnished, and that the lien might be enforced against either of them, irrespective of the value of the supplies furnished to it. On appeal, the Circuit Court reversing this decision, held the libelant entitled to a lien for the price of such materials as in fact were appropriated to *The Kiersage*. We have already referred to Judge Dodge's remarks on the cases arising under these state statutes in *The Geisha* (supra). As Judge Putnam said, in the *Berwind-White* case (p. 74, italics ours):

"As the New Jersey statute is framed, no difficulty arises by reason of the contract being single."

The Murphy Tugs, 28 Fed. 429 (cited on page 32 of petitioner's brief). This was a case of a maritime lien. Libelant had a single contract with the owners for services as a diver and steam-pump engineer at specified daily wages on the vessels of a fleet. The services were actually furnished to the vessels libeled and the particular services were furnished on the orders of the various masters. The only difficulty that the Court found in sustaining libelant's claim arose from the fact that the contract of employment was single. The distinction between *The Murphy Tugs* and case at bar is obvious. Services, unlike supplies, can-

not be "delivered" to an owner for subsequent appropriation by him among his different vessels. They can be *contracted for* singly without reference to particular vessels: but when they come to be *rendered* ("delivered"), they must be rendered to the vessels in the most direct and immediate way. The only question, therefore, as to services (prior to the Act of 1910) would be whether the services were rendered on the credit of the vessel. There can, properly speaking, be no question as to whether services were "furnished to" a vessel in the sense of being delivered to the vessel.

An illustration will show the true analogy between the case of services rendered under a single contract and the case of supplies furnished under a single contract. Suppose, under a single contract for supplies for the vessels of a fleet, each order under the contract specifies the vessel to which the supplies are to be delivered. Suppose, further, that the supplies so ordered are actually delivered to the vessel for which they are ordered by the seller. There should be no question whatever that in such a case the seller would obtain a lien on each vessel to which he had furnished supplies under these specific orders, and that it would be quite immaterial that the contract itself was a single one to supply the whole fleet, without reference to particular vessels. Such a case precisely was *Cuddy v. Clement*, 113 Fed. 454 (C. C. A., First Circ.), and there the lien was disallowed only because, the contract having been made with the owner at the port of his residence, the *then* necessary showing of a credit to the vessels was held not to have been made. See also *Whitcomb v. Metropolitan Coal Co.*, 122 Fed. 941.

If in the case at bar the petitioner under its contract had received an order from the oil company: "Please deliver into or alongside the steamer *Martin B. Marran* 100 tons of coal under your contract with us," the petitioner undoubtedly would have been entitled to a statutory lien

for the 100 tons of coal so delivered; for he would have delivered those 100 tons to the vessel within the strictest requirements of the maritime law.

McRae v. Bowers Dredging Co., 86 Fed. 344 (cited on p. 33 of petitioner's brief). The coal here was clearly furnished to the vessel in the strict maritime law sense:

"The coal was furnished on the request of the general manager, and was delivered in scows, from which it was received on board the dredges as required for use" (p. 349).

The only question discussed by the Court was whether or not an understanding that credit was to be given the vessels could be implied. It appears, moreover, that the claims for liens were founded upon a state statute as well as upon the general maritime law. The statute read as follows:

"All steamers, vessels and boats, their tackle, apparel and furniture, are liable: (1) For services rendered on board at the request of or on contract with their respective owners, masters, agents or consignees; (2) For supplies furnished in this state for their use at the request of their respective owners, masters, agents or consignees."

The *James H. Prentice*, 36 Fed. 777 (cited on page 37 of petitioner's brief). The case arose under a Michigan statute which gave a lien

"for all debts contracted by the owner or part owner, master, clerk, agent or steward of such craft * * * on account of work done, or materials furnished, by mechanics, tradesmen, or other *in and about* the building, repairing, fitting, furnishing or equipping such craft * * *."

The opinion shows clearly that the decision goes upon the wording of the statute. The Court said (p. 782):

"The statute authorizes a lien for 'materials furnished in and about the building or repairing' of

the craft. How those words can be tortured to mean that the material so 'furnished' must actually be incorporated into the craft, I am unable to see."

The materials in question, moreover, had been actually placed "either upon the vessel itself, or upon the dock at which she lay, for her use" (p. 781), but some of it had subsequently been taken away and used on other vessels. The materials were ordered for a specific vessel, and they would appear to have been delivered to the vessel even within the strict rule of *The Vigilancia*, since they had been actually brought "within the immediate presence or control of the officers of the ship."

The Worthington, 133 Fed. 725 (cited on p. 54 of petitioner's brief). The controversy was between the libelant and the owner, and the decision was placed squarely on an estoppel. The vessel was in a foreign port, and the libelant, at the owner's request, advanced the necessary funds to load her on the credit of the vessel. The owner had diverted some of the funds thus obtained. *Held*, that as against the libelant he was estopped from showing this. The 36 Fed. 493 (p. 727):

"But when the owner in person orders supplies for his vessel in a foreign port, and upon the credit of the vessel, he being without funds, he is estopped to say, as against one furnishing supplies or money represented by him to be necessary for the ship, that the supplies or money so procured were diverted from the purpose for which they were obtained, and were not applied to the service of the ship. *The E. A. Barnard* (C. C.), 2 Fed., 712, 716; *The Mary Chilton* (D. C.), 4 Fed., 847; *The Robert Dollar* (D. C.), 115 Fed., 218, 220."

The Court also said, in distinguishing *The Wyoming*, 36 Fed., 493 (p. 727):

"The question of estoppel did not arise, and was not considered. It may well be that, while

only be established by evidence both of a delivery to and of a credit to the vessel—except where the supplies or services were furnished or rendered to the vessel in a foreign port on the order of the master, in which case a credit to the vessel was presumed.

The Vigilancia, supra;

The Cimbria, supra.

In not a single pre-statutory case has evidence of a credit given to a vessel been held to dispense with the necessity of proof of a delivery to the vessel.

The change in the law, therefore, accomplished by the Act is simply to dispense with the necessity of proving a credit to the vessel. Had it been the intention of Congress to amend the law as to the necessity of a delivery to the vessel, Congress had the precedent of the numerous State statutes to which reference has been made, in which liens are given for work, labor, materials, etc., ordered or rendered "for or on account of" vessels, or the construction, repair, etc., of vessels, and similar expressions.

Prior to the Act the majority of the cases dealt with the question of credit to the vessel; the question in them was whether the facts sufficiently showed that an agreement or understanding existed to give credit to the vessel, although the supplies had been *delivered* to the vessel in the most immediate manner; and, of course, the controversy whether on this or that state of facts there had been a sufficient showing of credit to the vessel was the very controversy which the Act attempts to prevent from arising in the future by providing that a furnishing to the vessel in the sense of a delivery to it is alone sufficient to create a lien.

The proposition that the petitioner has to establish, however, is that a furnishing to a vessel in the sense

of a credit to it dispenses with the necessity of showing a furnishing to it in sense of a delivery to it. Not a case to this effect has been cited.

Instead, we are referred to a large number of pre-statutory cases in all of which immediate delivery of the supplies to the vessel was either assumed or undisputed, the question in dispute being whether, in spite of that fact, there had been a sufficient showing of a credit to the vessels. Cases of this sort in this Court are:

The Grapeshot, 9 Wall., 129;

The Lulu, 10 Wall., 192;

The Patapsco, 13 Wall., 329;

The Valencia, 165 U. S., 264;

The Kalorama, 10 Wall., 208.

If the construction of the Act which the petitioner's position thus requires to be put on it is the correct one, it is hard to see how the Act has effected any marked reform in the law. The object of the Act was to enlarge maritime liens and to simplify the law by dispensing with proof of credit to the vessel. It is now sought to dispense also with proof of delivery to the vessel. How? By evidence of credit given the vessel, thus throwing the whole subject again into the region of conflicting presumptions, doubtful inferences, and ambiguous parol understandings from which the Act of 1910 sought to rescue it.

POINT III.

THE RECORD DOES NOT PERMIT PETITIONER TO CLAIM A NON-STATUTORY LIEN UNDER AN EXPRESS CONTRACT OF GENERAL MARITIME HYPOTHECATION. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH ANY SUCH CONTRACT. EVEN IF SUCH A CONTRACT HAD BEEN MADE IT WOULD NOT HAVE CREATED A MARITIME LIEN ON THE VESSELS.

There is, we submit, only one other alternative, namely, that the petitioner has obtained a *non-statutory* lien by an express contract of maritime hypothecation.

1. *The petitioner is asserting a statutory lien and not a non-statutory lien, and on the record before this Court is foreclosed from asserting a non-statutory lien.*

We quote the following from p. 17 of the petitioner's petition for the writ of *certiorari*:

"The District Court has held that no maritime lien could be created apart from the statute * * *. No cross appeal was taken by the libellant and the only question before the Circuit Court of Appeals was whether, in view of the understanding of the parties that the coal was furnished on the credit of the vessels, * * * a lien was impressed upon the libeled vessels by force of the statute."

This seems to be conclusive against petitioner's right to claim a lien created by an express general contract of maritime hypothecation, for it would appear obvious that such a lien is not a statutory lien.

2. *The evidence is not sufficient to establish an express contract of hypothecation.*

We have already commented on the evidence in our statement of the facts. Neither the District Court nor the Circuit Court of Appeals thought that this evidence was sufficient to establish an express contract of maritime hypothecation apart from the statute. We submit that the following from the opinion of Judge Dodge in the Circuit Court of Appeals is a fair statement of the effect of the evidence concerning the alleged contract for a maritime lien.

"The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the

owner. The general manager of the Oil Corporation testified that, as he understood, a maritime lien on the entire fleet should be security upon which the libellant was to furnish coal, but to such an agreement no effect can be allowed, as has been stated. We regard the evidence as establishing, at most, such an understanding as the District Court found to have existed—that 'the law would afford a lien upon the vessels for the coal'—that is, according to the libellant's present contention, upon each vessel afterwards supplied, for the coal supplied to her."

3. *Even if there had been an express contract of maritime hypothecation attempting to hypothecate each of the vessels to which coal might eventually be appropriated by the owner for the price of the coal so appropriated to it, such a contract could not have given the petitioner a lien superior to the lien of the respondent's mortgage.*

In the fourth and fifth Points of its brief the petitioner seems to take the position that an owner may, by an express contract, create a maritime lien on his vessels, which shall have precedence over non-maritime liens, substantially for any purpose that he chooses. It is clear that this is not the law.

The cases are unanimous in denying the validity of even express agreements for liens on a fleet under general contracts with the owners for supplies to them:

Astor Trust Co. v. White Co., 241 Fed., 57;
The Cora P. White, 243 Fed., 246;
Munn v. The Columbus, 65 Fed., 430;
The Knickerbocker, 83 Fed., 843;
The Alligator, 161 Fed., 37;
The Newport, 114 Fed., 713.

In *The Alligator* (supra), the Court said, p. 42:

"A lien does not and should not attach for a supposed credit given to a vessel, unless the service or supplies are clearly shown to have been rendered or furnished to the particular vessel to which the credit is given."

In *Astor Trust Co. v. White & Co.*, supra, there was an express agreement under a contract for supplies for a fleet of steamers that the seller should have a maritime lien on the steamers "singularly and as a whole" (p. 58) for the supplies. It appears that the seller thought that the supplies were intended for use only by the steamers. (See p. 59). The Circuit Court of Appeals for the Third Circuit, after a careful review of the cases, held that such an agreement could not create a maritime lien. It is to be noted that the seller clearly recognized that the lien it was asserting was not a statutory lien.

"This question must be dealt with as one of general maritime law, since the appellees do not base their contention upon any statute, Federal or State" (p. 59).

The contract in the case at bar was not even a contract to coal a fleet, but a contract to supply the buyer's shore needs as well.

Such a contract clearly is not a maritime contract. In *Plummer v. Webb*, 4 Mason, 380, 388, Story, J., said:

"I cannot see that the whole contract is here of a maritime nature. There are mixed up in it obligations *ex contractu* not necessarily maritime and so far the contract is of a special nature. In cases of a mixed nature it is not a sufficient foundation for admiralty jurisdiction, that there are involved some ingredients of a maritime nature. The substance of the whole contract must be maritime."

In *The James T. Furber*, 129 Fed., 808, 812, the Court said:

"It has been repeatedly decided that to give the court jurisdiction over a contract as maritime, such contract must relate to the trade and business of the sea; it must be essentially and wholly maritime in its character."

See also

The Allianca, 65 Fed., 245;
The Advance, 71 Fed., 987;
The Cimbria, 156 Fed., 378, 384-385;
Berton v. Tictjen's, etc., Co., 219 Fed., 763, 769.
The Harvey and Henry, 86 Fed., 657;
Pacific, etc., Co. v. Leatham, etc., Co., 151 Fed., 440;
The Pennsylvania, 154 Fed., 9.

Even if the contract had been one solely for the Oil Company's fleet, it would not have been a maritime contract. *Diefenthal v. Hamburg, etc., Co.*, 46 Fed. Rep., 397; *S. S. Overdale Co. v. Turner*, 206 Fed., 339.

Clearly therefore no maritime lien in the strict sense can be created, even by express agreement, to the effect that a seller of supplies shall have a maritime lien on vessels to which the owner may eventually appropriate part of the supplies sold, where the contract of sale is a general contract to fill the buyer's general requirements for the season, non-maritime as well as maritime, and where the contract contemplates delivery into the owner's general stores and permits the owner to make such subsequent appropriation of the supplies to maritime or non-maritime uses as his needs may require.

As above shown, not only was the contract in question a non-maritime contract, but the orders and deliveries under it were also non-maritime, since none of them specified

that the coal ordered was for maritime use, much less for any particular vessel. It would appear indeed to be a contradiction in terms to say that supplies so sold are sold on the credit of vessels in the maritime law sense.

The petitioner cites *The Freights of The Kate*, 63 Fed. 707 (on appeal *The Advance*, 72 Fed. 793).

The case involved alleged express hypothecations of (1) freights, (2) vessels. The libelants had guaranteed letters of credit which were issued to the owner in the home port to enable the owner to disburse its vessels in Brazil with moneys derived from the guaranteed letters of credit. The owner was known by the guarantors to be insolvent. No vessels were specifically named. The supplies, etc., to pay for which funds had to be raised, had already been furnished; in other words, the liens of the supply men already existed. This appears clearly from the opinion in *The Advance*:

"This firm apparently grew restive and indisposed to increase their line of credit to the corporation, and it therefore became indispensable that it should obtain financial assistance elsewhere, for the purpose of enabling its vessels to pay their debts in Brazil, and return to New York." (*The Advance*, p. 794.)

* * * * *

"It appears from the foregoing facts that the cases stand on this wise: At the home port of a line of steamships which are in a foreign port, the insolvent owners of the vessels obtain from the petitioners, who know the owners' insolvent condition, indispensable means, by the aid of which the owners are enabled to discharge the liens resting upon the vessels in the foreign port." (*The Advance*, p. 796.)

The holding was that as to the freights the hypothecation was good against a prior mortgagee and that it created a valid maritime lien by express contract on the

freights of all the vessels of the line, and not only of the vessels which were supplied with the funds which libellant's guarantee enabled the owners to obtain. With respect to the vessels themselves, the holding was that there was no sufficient evidence of an express contract of hypothecation. The Court held that the agreement of guaranty and hypothecation, being an agreement made in order to put the owner in funds to pay off maritime liens, was a maritime contract. This, of course, sufficiently serves to distinguish the case from the case at bar. With respect to the freights, moreover, the opinion of Judge Brown in the District Court relies strongly on the fact that freights were not mentioned in the mortgage, and much reliance is also placed on the circumstance that freights are after acquired property. (See *The Freights of the Kate*, pp. 715-716).

With respect to the liens claimed on the vessels, libellants themselves based their claim on the theory that they were subrogated to the rights of the original lienors, the persons who had furnished the supplies.

Neither *The Freights of The Kate* nor *The Advance* can be construed as authority for the proposition that an owner may, even by express contract, create a maritime lien, which shall have precedence over a prior mortgage, on a contract for supplies non-maritime in character and under which, moreover, no maritime delivery of the supplies to the vessels themselves is contemplated.

Petitioner's brief also cites *The Mary*, 1 Paine 671. This was a case of a formal bottomry bond given by the owner to obtain money with which to purchase cargo. The owner had previously mortgaged the vessel, but had been allowed to remain in possession. *Held*, the lien on the bottomry bond had precedence over the lien of the mortgage. The decision goes on the express ground that the mortgage

"would not create any valid lien as against a subsequent bona fide purchaser or encumbrancer with-

out notice. * * * *On the principles of the common law as well as of equity* the claim of Daniel Young must be postponed to that of libellant" (p. 677; Italics ours.)

POINT IV.

BY DISPENSING WITH THE NECESSITY OF PROVING CREDIT TO VESSELS THE ACT OF 1910 AT ONCE ENLARGES THE SCOPE OF MARITIME LIENS AND SIMPLIFIES THE LAW. TO DISPENSE WITH THE NECESSITY OF A MARITIME DELIVERY WOULD THROW THE LAW INTO CONFUSION AND OPEN THE DOOR TO MANY FRAUDULENT AND COLLUSIVE CLAIMS. MARITIME LIENS ARE STRICTI JURIS. THE PETITIONER'S COMPLAINTS OF THE HARDSHIP OF THE DECISION BELOW ARE THE COMPLAINTS OF A FAVORITE OF THE LAW ASKING FOR FURTHER FAVORS. THE HARDSHIPS, MOREOVER, ARE LARGELY FANCIFUL.

Maritime liens are *stricti juris* and are not to be extended by construction, analogy or inference.

As Judge DODGE points out:

"When the statute was passed in 1910, no principles of the maritime law of the United States were more fully recognized or more firmly adhered to than those set forth in the familiar statements by the Supreme Court in *Vandewater v. Mills* (*The Yankee Blade*), 19 How., 382, 389, to the effect that maritime liens are *stricti juris* because they may operate to the prejudice of general creditors and purchasers without notice, and that they cannot be extended by construction, analogy or inference."

The following additional quotations will suffice:

The Larch, 14 Fed. Cas., 1139 (2 Curt. 427) at 1141:

"A lien being an exception to the general rule, which entitles all creditors to participate equally in all the property of their debtor, and a maritime

lien being also a *jus in re*, which goes with the thing into the hands of purchasers, and so is embarrassing to commerce, it is *stricti juris*; must be derived from some provision of positive or customary law, which clearly confers it in the case in judgment; and it cannot be made out by way of argument from analogy, nor from considerations of convenience. Such considerations are for the legislature alone."

Munn v. The Columbus, 65 Fed., 430, 432:

"The courts are jealous of the extension of admiralty liens and more inclined to restrict than to extend them."

Prince v. Ogdensburg Transit Company, 107 Fed., 978, 982:

"Maritime liens for repairs and supplies, being secret incumbrances, are not favored. They are allowed only upon grounds of commercial convenience and necessity."

The Aurora, 194 Fed., 559, 560:

"A maritime lien is a privileged one, secret in character, overriding all other liens or transfers, possibly operating to the prejudice of creditors or purchasers without notice. In the nature of things it is *stricti juris*, and must be shown to exist."

The decisions under the Act continue to invoke the rule of *stricti juris*.

The Dredge A, 217 Fed., 617, 637;

Astor Trust Co. v. White, 241 Fed., 57, 62;

The Cora P. White, 243 Fed., 246, 248.

The change in the law of maritime liens contemplated by the act is clear. The act was intended to dispense with the necessity of proving a credit to vessels. It was not intended to dispense with the necessity of a maritime delivery

to vessels. In this respect the act leaves the law where it was, and it is the petitioner and not the respondent whose construction of the act would be "subversive."

The petitioner says that the case is one of unusual hardship. Practically every consideration of hardship adduced would apply equally to sellers of supplies to any other commercial enterprise or agency of transportation essential to the public welfare. It was no more necessary for the Oil Company's fleet to catch fish than it was for its factories to reduce them to oil. It is no more "manifestly to the interest of the public under prevailing economic conditions," that steamships shall run than that locomotives shall run. The petitioner's notions of hardship are in truth those of a somewhat pampered favorite of the law, who has forgotten how to help himself, asking for further favors.

It is obvious that with very little cost or trouble to itself, the petitioner could have perfected its maritime liens for the coal delivered to the Oil Company's steamers. In cases like the present one where the owner may call for the delivery of supplies before the arrival of vessels destined to consume them arrangements can almost always be easily made for the segregation of the supplies on the owner's property in the custody of the seller's custodian.

On the other hand the dangers of allowing maritime liens of the character claimed here are obvious. The opportunities for collusion between supplier and owner to the prejudice of mortgagees are great. Mr. Meadows was doubtless testifying truly; but consider the possibilities of fraud which the decision of the District Court opens up. A supply man who has furnished large quantities of supplies to a ship owner on the owner's credit, which supplies he has delivered to the owner generally, knowing possibly that the majority of them were destined for vessels, but not caring in the least what the owner does with them, suddenly discovers that the owner is insolvent. He then libels

There were also other notes outstanding for coal furnished in February and March, 1914.

It would appear, therefore, that the Oil Company did actually apply this draft when it was first received on account of the outstanding open account for the coal for which notes had not been given and which was unpaid for.

The subsequent application of this amount, on advice of counsel, after the receivership, to the note for \$3,800 was therefore a reapplication to another account after the Oil Company had already elected to apply it on the open account for the coal for which notes had not been given.

It is submitted that after the receiver was appointed and certainly after these cases were brought, neither the Court nor the libellant had the right to change the original application of this payment to the detriment of the mortgagee and general creditors.

U. S. v. Kirkpatrick, 9 Wheat, 720;

The Sophia Johnson, 237 Fed. 406;

30 Cyc. 1250-1.

See also

The Mary K. Campbell, 40 Fed. 906;

The Asiatic Prince, 108 Fed. 287;

U. S. v. Brent, 236 Fed. 771.

In *U. S. v. Kirkpatrick*, supra, Judge STORY at page 737 said:

"The general doctrine is that the debtor has a right, if he pleases, to make the appropriation of payments; if he omits it, the creditor may make it; if both omit it, the law will apply the payments according to its own notion of justice. It is certainly too late for either party to claim a right to make an appropriation, after the controversy has arisen, and a *fortiori* at the time of the trial."

The Sophia Johnson, supra, was a case in the District Court for the Western District of Washington, where it appeared that the intervener had sold oil from time to time to the owner of the vessel for commercial purposes and also for use of the vessel. It was also charged in a general account and all payments made were credited to such account. Later, after a controversy had arisen, the intervener sought to apply all of these payments against items for oil furnished for commercial purposes and to assert a maritime lien for all the oil furnished to the vessel. The Court *held* that an application of payment once made **could not be changed** so as to affect the rights of a third person, that payments should therefore be credited to the entire open account and that the intervener was entitled to a lien for only a proportionate part of the balance remaining unpaid. The Court at page 408 used language which we believe is pertinent to the facts of this case:

"The payments, as disclosed by the testimony, were credited to the current account, in which were the items of oil furnished for the commercial purposes as well as the oil for consumption upon the vessel. Nothing appears in the account to indicate any intention on the part of the intervening libelants other than to furnish the oil upon the general current account. A party cannot intermingle items for which he has a lien with items for which he has no lien, and then assert a lien for the entire amount. Such is construed into a fraudulent intent, and the entire claim is defeated.

"The payments made were applied to the general account, and that included some items for which a lien is now asserted, and after the application of the payment by the creditor, it cannot be altered by him, except by mutual consent. *Pearce v. Walker*, 103 Ala., 250, 15 South., 568. And where application is made at the time of payment, no change in appropriation can afterwards be made, so as to affect the equities of third parties."

If the decree of the Circuit Court of Appeals is reversed, we ask that respondent's Assignments of Error Nos. 10 and 11 on the appeal to the Circuit Court of Appeals be sustained, and that the amounts of the several maritime liens which may be awarded the petitioner to the extent of \$2,000 be reduced *pro rata*, according to the ratio which the amount of each lien bears to the total sum due on the whole open account on August 24th, 1914.

POINT VI.

THE DECREE OF THE CIRCUIT COURT OF APPEALS SHOULD BE AFFIRMED WITH COSTS TO THE RESPONDENT.

Respectfully submitted,

ROYALL VICTOR,
Counsel for Respondent
SEABOARD FISHERIES COMPANY,

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1920.

**PIEDMONT & GEORGES CREEK COAL COM-
PANY v. SEABOARD FISHERIES COMPANY,
CLAIMANT, &c.**

**CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.**

No. 58. Argued March 16, 17, 1920.—Decided October 11, 1920.

An oil company, owner of a fleet of fishing steamers and also of oil factories where the catch was delivered and the vessels coaled, having mortgaged this property and being without money or credit, made an agreement with a coal dealer to furnish the coal necessary for the season's operations, both parties understanding that the coal would be used by the factories as well as by the vessels, that the greater part would be used by the vessels, that the law would afford a lien on the vessels for the purchase price and that the coal dealer would thus have security. The coal was billed and delivered directly to the oil company, title passing with delivery; it was then stored by that company in its factories, and afterwards appropriated by it mainly to the vessels but partly to the factories, as occasion arose; and there was no understanding when the contract was made or at times of delivery that any part of it was for any particular vessel or for the vessels then composing the fleet. In libels of some of the vessels involving the coal dealer's rights as against a purchaser under the prior mortgage, *held*: (1) That the coal dealer had no maritime

lien for furnishing supplies "to a vessel . . . upon the order of the owner," under the Act of June 23, 1910, c. 373, § 1, 36 Stat. 604, because the coal furnished the vessels was furnished by their owner and not by the coal dealer, p. 6, *et seq.*; (2) That the fact that such maritime use had been contemplated did not render the subsequent appropriation by the owner a furnishing by the coal dealer to the several vessels, p. 8; nor (3) was the understanding of the owner and the dealer that the law would afford a lien of any legal significance as against the purchaser under the mortgage. P. 10. To hold that a maritime lien for the unpaid purchase price of supplies arises in favor of the seller merely because the purchaser, who is the owner of a vessel, subsequently appropriates the supplies to her use, would involve abandonment of the principle upon which maritime liens rest and the substitution therefor of the very different principle which underlies mechanics' and materialmen's liens on houses and other structures. P. 8.

253 Fed. Rep. 20, affirmed.

THE case is stated in the opinion.

Mr. John M. Woolsey, with whom *Mr. Frank Healy*, *Mr. F. C. Nicodemus, Jr.*, and *Mr. H. Brua Campbell* were on the brief, for petitioner:

Is the petitioner to be deprived of its lien and its decrees undermined for the benefit of the purchaser of the vessels at foreclosure sale, who acquired the vessels with full knowledge of the facts, merely for the reason that the petitioner did not do the impossible and indicate in advance of the delivery of the coal at the oil corporation's bins the name of each vessel to be supplied with coal and the amount to be appropriated to her?

It is urged that such a construction is out of line with previous well-considered judicial decisions and so limits the act of Congress that it is wholly unavailable as a source of credit to ship owners operating fleets of vessels.

The Act of June 23, 1910, affords a maritime lien for supplies furnished to a vessel, and where coal is delivered to the owner of a fleet of vessels for distribution among them, upon an express stipulation that the delivery is

1. Argument for Petitioner.

made upon the credit of the vessels and not upon the credit of the owner, a lien attaches to each vessel for the coal actually distributed to and used by it.

The case of the petitioner is one of unusual hardship.

It parted with its coal solely upon the security of the lien given by the act of Congress. The coal was actually delivered to and used by the libeled vessels to the amount for which the lien was allowed against each of them. By the use of the petitioner's coal the vessels were kept in operation, contributing earnings to the oil corporation and its creditors, including the claimant herein, which under foreclosure proceedings, purchased the libeled vessels with knowledge that the petitioner asserted a maritime lien against them for coal unpaid for although actually delivered to, and used by, the vessels.

A maritime lien under such conditions is sustained by the weight of authority both prior to and subsequent to the passage of the Act of June 23, 1910. *The Yankee*, 233 Fed. Rep. 919; *Berwind-White Coal Co. v. Metropolitan S. S. Co.*, 166 Fed. Rep. 782; 173 Fed. Rep. 471 (materialman's lien); *The Kiersage*, 2 Curtis, 421 (materialman's lien); *The Cora P. White*, 243 Fed. Rep. 246 (where the claim of maritime lien was denied only because the coal was furnished the owner without mentioning that it was intended for use on a vessel); *The Murphy Tugs*, 28 Fed. Rep. 429 (maritime lien); *McRae v. Bowers Dredging Co.*, 86 Fed. Rep. 344 (maritime lien); *The Grapeshot*, 9 Wall. 129, 145; *The Lulu*, 10 Wall. 192, 204.

While it is true that certain of the above decisions were rendered under state statutes, we fail to perceive, in view of the wording of the lien act, any substantial basis for distinguishing them or questioning their authority.

Especial reliance is placed upon the decision in *The Kiersage*, 2 Curtis, 421. The Maine statute involved in that case allowed a lien for supplies "furnished to or for account of a vessel."

The lien act was intended to increase the security of persons furnishing supplies to vessels, not to narrow or circumscribe it, and hence should have an enlightened construction to meet modern needs.

It is not necessary in order to impress a maritime lien on a vessel that the supplies be actually delivered on board the vessel by the person who supplies them. *Ammon v. The Vigilancia*, 58 Fed. Rep. 698; *Delaware & Hudson Canal Co. v. The Alida*, 7 Fed. Cas. 399; *The James H. Prentice*, 36 Fed. Rep. 777.

It is settled that an owner may by agreement, express or implied, create a maritime lien on his vessel for supplies furnished. *The Kalorama*, 10 Wall. 208; *The Cimbria*, 214 Fed. Rep. 128; *The Alaskan*, 227 Fed. Rep. 594; *The George Dumois*, 68 Fed. Rep. 926; *The Fortuna*, 213 Fed. Rep. 284; *The South Coast*, 247 Fed. Rep. 84.

Agreements for a general lien such as was here shown have frequently had judicial approval, and the fact that the supplies have been first charged to the owner on the supplier's books has been held immaterial. *The Patapsco*, 1871, 13 Wall. 329; *Lower Coast Transportation Co. v. Gulf Refining Co.*, 211 Fed. Rep. 336; *Freights of The Kate*, 63 Fed. Rep. 707; *The Advance*, 72 Fed. Rep. 793; *Astor Trust Co. v. White & Co.*, 241 Fed. Rep. 57.

As between the owner of a vessel, who agrees to give a maritime lien for money or supplies, and the person furnishing the money or supplies on the credit of the vessel, the owner is estopped to deny that the money or supplies were actually used for the vessel. *The Worthington*, 133 Fed. Rep. 725; *The Schooner Mary Chilton*, 4 Fed. Rep. 847; *The Robert Dollar*, 115 Fed. Rep. 218; *United Hydraulic Cotton Press v. Alexander McNeil*, Fed. Cas. 14,404; *The Mary*, 1 Paine, 671.

Mr. Philip L. Miller, with whom Mr. Royall Victor was on the brief, for respondent.

1. Opinion of the Court.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

The Atlantic Phosphate and Oil Corporation owned a fleet of nineteen fishing steamers. It owned also factories at Promised Land, Long Island, and Tiverton, Rhode Island, to which the fish caught were delivered and at which its vessels coaled. When the fishing season of 1914 opened the company was financially embarrassed. Its steamers and factories had been mortgaged to secure an issue of bonds. Bills for supplies theretofore furnished remained unpaid. The company had neither money nor credit. It could not enter upon the season's operations unless some arrangement should be made to supply its vessels and factories with coal. After some negotiations, the Piedmont and Georges Creek Coal Company, then a creditor for coal delivered during the year 1913, agreed to furnish the Oil Corporation such coal as it would require during the season of 1914—the understanding of the parties being that the coal to be delivered would be used by the factories as well as by the vessels, that the greater part would be used by the vessels, that the law would afford a lien on the vessels for the purchase price of the coal and that the Coal Company would thus have security. Shipments of coal were made under this agreement from time to time during the spring and summer as ordered by the Oil Corporation. In the autumn receivers for the corporation were appointed by the District Court of the United States for the District of Rhode Island, and later a suit was brought to foreclose the mortgage upon the vessels and factories. At the time the receivers were appointed five cargoes of coal shipped under the above agreement had not been paid for. The Coal Company libeled twelve of the steamers asserting maritime liens for the price and value of either all the coal or of such parts as had been used by the libeled vessels respectively.

Meanwhile, the vessels were sold under the decree of foreclosure. The Seaboard Fisheries Company became the purchaser and, intervening as claimant in the lien proceedings, denied liability. The District Court held that the Coal Company had a maritime lien on each vessel for the coal received by it. *The William B. Murray*, 240 Fed. Rep. 147. The Circuit Court of Appeals reversed these decrees with costs and directed that the libels be dismissed. *The Walter Adams*, 253 Fed. Rep. 20. Then this court granted the Coal Company's petition for a writ of certiorari. 248 U. S. 556.

As to the facts proved there is no disagreement between the two lower courts. The substantial question presented is whether these facts constitute a furnishing of supplies by the Coal Company to the vessels upon order of the owner within the provisions of the Act of June 23, 1910, c. 373, § 1, 36 Stat. 604.¹ That coal was furnished to the vessels to the extent to which they severally received it on board, is clear. The precise question, therefore, is: Was the coal furnished by the libelant, the Coal Company, or was it furnished by the Oil Corporation, the owner of the fleet? In determining this question additional facts must be considered:

No coal was delivered by the Coal Company directly to any vessel; and it had no dealings of any kind concerning the coal directly with the officers of any vessel. All the coal was billed by the Coal Company to the Oil Corporation and there was no reference on any invoice, or on its books, either to the fleet or to any vessel. There

¹ Act of June 23, 1910, c. 373, § 1: Any person furnishing repairs, supplies, or other necessities, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

1.

Opinion of the Court.

was no understanding between the companies when the agreement to supply the coal was made or when the coal was delivered that any part of it was specifically for any one of the several vessels libeled, or that it was for any particular vessel of the fleet, or even for the vessels then composing the fleet. Indeed, the first shipment was stated on the invoice to be "coal for factory." The negotiations of the Oil Corporation with the Coal Company did not relate to coal required at that time by the particular vessels subsequently libeled as distinguished from other vessels of the fleet.

The coal was sold f. o. b. at the Coal Company's piers which were at St. George, Staten Island, and Port Reading, New Jersey. At these piers it was loaded on barges which were towed either to the Oil Corporation's plant at Promised Land or to that at Tiverton. Some of these barges were supplied by the Oil Corporation, some by the Coal Company. If supplied by the latter, trimming and towing charges were added to the agreed price of the coal. Upon arrival of the coal at the factories it was placed in the Oil Corporation's bins. At Promised Land—which received four of the five shipments—the bins already contained other coal (1068 tons) which had been theretofore purchased by the Oil Corporation and had been paid for. With this coal on hand that delivered by libelant was commingled. At each plant both the vessels and the factory were from time to time supplied with coal from the same bins; but the greater part of the coal supplied from each plant was used by the vessels. Weeks, and in some instances months, elapsed between placing the coal in the bins and the delivery of it by the Corporation to the several vessels. When it made such deliveries it furnished coal to the vessels, as it did to the factories, not under direction of the Coal Company but in its discretion as owner of the coal and of the business.

The quantity of coal delivered to each vessel was

to provide by agreement for their own protection and could often be unable to do so.¹

The fact found by the lower courts that the parties understood the law would afford a lien on the vessels for coal is, in this controversy, without legal significance. If coal had been furnished to the several vessels by the libellant, maritime liens would have arisen and could have been established under the statute without proof that credit was given to the vessels. Since the libellant did not furnish any coal to the vessels, the erroneous belief of the parties that the law would afford a lien either for the coal furnished to the Oil Corporation or for that delivered by it to the several vessels could not create a lien under the statute. Clearly no maritime lien could result herefrom valid as against the claimant which had supplied the coal to the vessels under a mortgage antedating the purchase. *Astor Trust Co. v. E. V. White & Co.*, 241 Fed. Rep. 57.

The difficulty which confronts the Coal Company does not lie in the fact that the contract for the coal was made with the Oil Corporation. A vessel may be made liable *in rem* for supplies, although the owner can be made liable therefor *in personam*; since the dealer may maintain the credit of both. *The Bronx*, 246 Fed. Rep. 409. Likewise, the fact that the coal which was supplied to the several vessels had been purchased under a single contract presents no difficulty. For while one vessel of a fleet cannot be made liable under the statute for supplies furnished to the others, even if the supplies are furnished upon orders of the owner under a single contract, *The Cylambus*, 65 Fed. Rep. 430; 67 Fed. Rep. 553; *The*

¹ *Yusanto Van Stone v. Stillwell & Bierce Mfg. Co.*, 142 U. S. 128, 129; *McCourt v. Warner*, 4 Watts & S. 223, 226; *Bolton v. Johns*, 100 Me. 143, 150; *Taggard v. Buckmore*, 42 Maine, 77, 81; *Buck v. Shaw*, 100 Mo. (Miss.) 874, 881; *Montandon & Co. v. Deas*, 14 Ala. 366; 44 *Meachon v. Sullivan*, 1 Mont. 470, 473.

Newport, 114 Fed. Rep. 713; *The Alligator*, 161 Fed. Rep. 37; *Astor Trust Co. v. E. V. White & Co.*, 241 Fed. Rep. 57, 61; each vessel so receiving supplies may be made liable for the supplies furnished to it. *The Murphy Tugs*, 28 Fed. Rep. 429. The difficulty which, under the general maritime law, would have blocked recovery by the Coal Company is solely that it did not furnish coal to the vessels upon which it asserts a maritime lien; and there is nothing in the Act of June 23, 1910, which removes that obstacle.

It is urged by the Coal Company that it was the intention of Congress in passing the act to broaden the scope of the maritime lien and that the construction of the act adopted by the Circuit Court of Appeals renders the statute inoperative in an important class of cases which it was intended to reach. The language of the statute affords no basis for the latter assertion, and the Reports of the Committees of Congress (Senate Report, No. 831, 61st Cong., 2d sess.) show that it is unfounded. Those reports state that the purpose of the act was this: *First*, to do away with the artificial distinction by which a maritime lien was given for supplies furnished to a vessel in a port of a foreign country or state, but denied where the supplies were furnished in the home port or state. *The General Smith*, 4 Wheat. 438. *Second*, to do away with the doctrine that, when the owner of a vessel contracts in person for necessities or is present in the port when they are ordered, it is presumed that the materialman did not intend to rely upon the credit of the vessel, and that hence, no lien arises. *The St. Jago de Cuba*, 9 Wheat. 409. *Third*, to substitute a single federal statute for the state statutes in so far as they confer liens for repairs, supplies and other necessities. *Peyroux v. Howard*, 7 Pet. 324. The reports expressly declare that the bill makes "no change in the general principles of the present law of maritime liens, but merely substitutes a single

statute for the conflicting state statutes." The act relieves the libellant of the burden of proving that credit was given to the ship when necessities are furnished to her upon order of the owner, but it in no way lessens the materialman's burden of proving that the supplies in question were furnished to her by him upon order of the owner or of some one acting by his authority. The maritime lien is a secret one. It may operate to the prejudice of prior mortgagees or of purchasers without notice. It is therefore *stricti juris* and will not be extended by construction, analogy or inference. *The Yankee Blade*, 19 How. 82, 89; *The Cora P. White*, 243 Fed. Rep. 246, 248.

The Coal Company relies strongly upon *The Kiersage*, 2 Curtis, 421, and *Berwind-White Coal Mining Co. v. Metropolitan Steamship Co.*, 166 Fed. Rep. 782; 173 Fed. Rep. 471. The language of the state statutes there under consideration differs from that of the federal act. Furthermore, the state legislation creating liens for work and materials furnished in the repair and supply, as well as in the construction of vessels, are largely extensions of the local mechanic's lien laws applicable to buildings.¹

The Coal Company also urges upon our attention *The Yankee*, 233 Fed. Rep. 919, 925, 927. There the court in sustaining a maritime lien declared that the supplies were delivered not to the charterer but to the vessel, holding that "a materialman may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel

¹ See "Confusion in the Law Relating to Materialmen's Liens on Vessels," 21 Harvard Law Review, 332, and "The New Federal Statute Relating to Liens on Vessels," 24 Harvard Law Review, 182, both by Fitz-Henry Smith, Jr.

1. Opinion of the Court.

consistent with the instructions of the order and the intentions of the parties giving and accepting it." And in respect to the coal supplied the court there found specifically that "the quantity to be supplied to and daily consumed by the Yankee, was mentioned and considered by the parties." In the case at bar there was no understanding when the contract was made, or when the coal was delivered by the libelant, that any part of it was for any particular vessel or even for the vessels then composing the fleet. And it was clearly understood that the purchasing corporation would apply part of the coal to a non-maritime use. The difficulty here (unlike that presented in *The Vigilancia*, 58 Fed. Rep. 698; *The Cimbria*, 156 Fed. Rep. 378, 382; and *The Curtin*, 165 Fed. Rep. 271) is not in failure to show that the coal was furnished to the vessels but in failure to prove that it was furnished by the libelant.

It was also argued that the parties made an express agreement that the Coal Company should have a lien; that is, that they created by agreement a non-statutory lien. The concurrent findings of fact by the lower courts, which we accept (*Baker v. Schofield*, 243 U. S. 114, 118; *La Bourgogne*, 210 U. S. 95, 114; *The Germanic*, 196 U. S. 589, 595;) are to the contrary.

Affirmed.